



Exploring the Link between Non-Profit Law and the Internal
Governance of Non-Profit Membership Organisations: Legal Forms
and Maintaining Indirect Benefits in the UK and the Netherlands

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Abstract

Scholars of non-profit law and policy have mainly focused on understanding the regulatory frameworks in which organisations operate with limited interest in the intra-organisational consequences of legal regulation. Simultaneously, third sector and interest group researchers whilst recognizing the impact of external factors on organisational form and behaviour, have not explored the impact of non-profit law related to legal forms and maintaining indirect benefits such as legal personality and tax beneficial status on the internal governance of organisations. To address this gap, the main research question of this study is whether and how does non-profit law related to legal forms and indirect benefits affect - or fail to affect - the internal governance of non-profit membership organisations in developed democracies?

This thesis draws on resource dependence and institutional isomorphism theory. My main argument is that non-profit law affects organisations' internal governance by shaping two of its central aspects: members' formal voting rights and their usage on the one hand, and board professionalisation on the other. These aspects of internal governance are important because they outline the governing model of an organisation that can range from membership centred - where members engage in rule-based participation, meaning that they actively use the formal rights granted to them by organisational statutes and are represented on the boards - to a leadership centred model where members do not engage in rule-based participation and boards are dominated by external professionals. Furthermore, I argue that organisations with leadership centred models offer many opportunities for consultative participation, whilst organisations with membership centred models offer significantly fewer opportunities for consultative participation. Analytically, the study bridges legal analysis of regulatory requirements with organisational-level research on changes in internal governance in ten systematically selected non-profit membership organisations operating in the UK and the Netherlands - two contrasting regulatory regimes, representative of common law and the civil law non-profit tradition respectively. This exploratory qualitative comparative study utilised multiple sources of evidence including statutory regulation, secondary sources, organisational documentation, semi-structured interviews and email correspondence with legal experts and organisational actors.

The findings suggest that in the UK, where non-profit law does not regulate the powers of organisational members, non-profit membership organisations vary in terms of who is granted formal voting rights: the wider members or the executive board. In contrast, non-profit membership organisations in the Netherlands provide a central role to organisational members and, in turn have a strong predisposition for rule-based participation. Furthermore, organisations operating under lower regulatory constraints across different legal regimes have executive boards filled in with organisational members as opposed to externally recruited professionals. Organisations that operate under high regulatory constraints in the UK have executive boards replete with professionals recruited from outside of the organisation. Finally, differences in consultative participation across organisations can be better explained by country and policy specific dynamics and organisational mission than by the governing model of the organisations.

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*“Modern organisations are immersed in a sea of law”
(Edelman and Suchman 1997, 480)*

“Non-profit organisations should be viewed as products of a political system in which the state is the key supplier of the rules” (Bloodgood et al. 2013, 717)

1. Introduction

1.1. The Research Topic and the Research Question

Non-profit regulation sets the institutional environment in which non-profit membership organisations form and maintain themselves (Guo 2007; Gugerty and Prakash 2010; Bloodgood et al. 2013). In developed democracies, the state has adopted a more pronounced regulatory and managerial role regarding voluntary organisations through the provision of legal status, fiscal benefits and state funding (Toepler and Salamon 2015; Fraussen 2013). The rise of the “regulatory state” and the changes in the welfare systems across developed democracies has increased the responsibilities of non-profit organisations (Brandsen and Pestoff 2006; Phillips and Smith 2014, 1142; Akingbola 2004). Since the 1980s, the role of non-profit organisations has expanded as the state increasingly contracts them in public service delivery (Kramer 1994; Salamon and Flaherty 1996; Cunningham and James 2011, 226; Smith and Smyth 2010, 277). These changes have altered the “status and style of state regulatory institutions and the regulatory toolbox used to shape the behaviour of charities and non-profits, including registration, reporting and standards of conduct that are linked to privileges [...]” (Phillips and Smith 2014, 1143). Due to the expanded role and benefits afforded to non-profit organisations in developed democracies, they face increased demands for effectiveness, impact, accountability, and transparency (Cornforth 2003; Billis 2010; Steen-Johnsen, Eynaud and Wijkström 2011; for discussion of Anglo-Saxon countries see Phillips and Smith 2014). The state imposes reporting and accountability requirements on organisations in order to be able to: control the financial transactions of organisations and; strengthen the capacities of organisations to sustain themselves financially and pursue their core missions effectively.

Despite a strong focus in the literature on the consequences on non-profit organisations from state funding and the contracting of public services, we need to recognize that only some non-profit organisations are dependent on state funding and the regulatory constraints related to its maintenance. In contrast, all of the non-profit organisations operating within a legal regime are *constituted* by the state through rules on legal forms and the majority of them are *regulated* via rules related to maintaining indirect benefits, such as legal and tax beneficial status. While the regulatory requirements related to the maintenance of tax benefits have attracted some attention in the third sector literature (Phillips 2013, 883), only a few authors pay brief attention to the legal structures in which non-profit organisations maintain themselves and the accountability regimes attached to them (Cordery et al. 2016, 281-282). To overcome this gap, this study sets to explore the constitutive and regulatory functions of non-profit law related to the adoption of legal forms and the maintenance of indirect benefits in developed democracies. The non-profit law which is the focus of this study encompasses mainly statutory legislation enacted by legislatures and -to a limited extent- case law produced by courts.¹ Regulatory (or legal) constraints are hence defined as a set of legal requirements, costs, and obligations that organisations have to comply with when operating in a certain legal form and in order to maintain receipt of indirect state benefits. This study explores the ways in which non-profit law potentially affects the internal governance of non-profit membership organisations² which are defined as self-governing, organised, private, voluntary organisations with membership, and that pursue aims that will benefit their members and/or the broader public (Salamon and Anheier 1997). Understanding the internal governance of non-profit membership associations is important because they constitute the core of civil society in democratic countries (Freise and Hallmann 2014, 7).

¹ In this thesis I use law and regulation interchangeably, but this does not include bureaucratic rules i.e. what policy researchers regard as regulation. Only in limited situations does this study focus on obligatory rules issued by state agencies that specify legal constraints in line with the primary law. In this study I will not focus on the self-regulation of non-profit organisations (Bies 2010), but only on the legal regulations for which compliance is obligatory. Compliance is assured in most cases by state agencies or by the courts (Bolleyer 2018, 37).

² Also referred to in the literature as associations. The term has been avoided here so as to distinguish the organisational form of a membership group i.e. association from the legal form of the association present across countries with civil law non-profit tradition.

Non-profit membership organisations are exposed to different regulatory constraints depending on their legal form, access to tax beneficial status, and the legal regime within which they are situated (Cornforth 2011, 1123). Differences in non-profit law related to legal forms and tax beneficial status create the possibility of conducting comparative research which focuses on the impact of different legal regimes on the internal governance of non-profit organisations (Cornforth 2011). I am interested in exploring the impact of legal forms in different legal regimes on formal voting rights of members, as well as the impact of exposure to regulatory constraints related to indirect benefits on board professionalisation in non-profit membership organisations. In summary, this study is interested in shedding light on the following question:

Whether and how does non-profit law related to legal forms and indirect benefits affect – or fail to affect – the internal governance of non-profit membership organisations in developed democracies?

The question of how a regulatory environment shapes organisational structures has not been a matter of sufficient academic attention (Kerlin and Reid 2009 803; Hustinx et al. 2014). The first contribution of this thesis is that it analyses non-profit law related to legal forms and indirect benefits, aspects of law that affect many organisations in the population but have not been studied comparatively from an intra-organisational perspective. This thesis' second contribution is that it bridges research on non-profit law with organisational level research on non-profit governance, which have rarely been integrated in the same study (see Bolleyer 2018). Thirdly, the thesis brings conceptual and theoretical insights from both third sector research and interest group research when examining intra-organisational change, two fields of study that overlap in the study of non-profit groups but have developed separately.

The first two aspects of internal governance that I am focusing on in this study – formal voting rights for members and board professionalisation – are important because they outline the governing model of an organisation. An organisation can have a leadership centred model of governance, characterised by lack of formal voting rights and their use (i.e. absence of rule-based participation) and presence of board professionalisation. This is in contrast to a membership centred model of governance which is characterised by the use of formal voting

rights and absence of board professionalisation. The third aspect of internal governance that I focus on is, consultative participation³, which is a way for organisations to complement other types of membership involvement that are rule-based (AGM attendance, voting on issues and election of leaders) or to compensate for their lack thereof. This thesis is concerned with whether non-profit law encourages one model of governance over the other. My main concern is not to evaluate groups against the ideal of internal democracy but to recognize that groups with diverse governing models produce different kinds of democratic effects (Warren 2001; see discussion below). My goal is to investigate the extent to which the law shapes internal governing models as opposed to other factors such as the core mission of the organisation (political, service provision or leisure) or the type of membership.

In this thesis, I define legal forms as the types of organisational structures an organisation can adopt from a legal perspective. Indirect state benefits encompass legal personality and tax beneficial status, which are the two types of benefits most frequently accessed by non-profit membership organisations.⁴ Legal personality means that an organisation is an incorporated body according to law and its members have limited liability. Tax beneficial status entails the provision of tax credits and exemptions for organisations whose purposes are in line with the public interest. Organisations with legal personality enjoy various benefits such as: contracts can be signed in the organisation's name; a bank account can be opened for it; the organisation can own, rent, and sell assets; its founders have limited liability; it has increased legitimacy in front of government stakeholders; and it can apply for funding programs which are often eligible only for legal entities. Beneficial tax status is granted to organisations whose core purpose and activities are in line with the public benefit criteria defined by the state. In most democracies, tax benefits are granted directly to the organisation as well as to its donors. Tax beneficial status is usually accessed through a

³ In comparison to rule-based participation, member input through consultative representation is not binding for the leadership of an organisation because it is not rooted in formal voting rights enshrined in the organisations' statutes.

⁴ Indirect benefits differ from direct monetary state resources such as grants and contracts (Bullain and Panov 2012). There are other indirect state benefits available to non-profit organisations in developed democracies such as: non-financial support in the form of trainings, office equipment, marketing support etc., however, the forms of indirect benefits I am focusing on in this study are most common across countries/regulatory regimes, most frequently accessed by organisations.

registration process similar to the process of registration for accessing legal personality (Salamon and Flaherty 1996). The process of incorporation is normally less burdensome and costly than the process of accessing tax beneficial status.

Non-profit governance is defined as the way in which organisations organise internally in terms of member enfranchisement and executive board composition. Some organisations may grant members formal voting rights while others will not. Formal voting rights are defined as the rights of ordinary members to attend the annual general meeting and elect their representatives. Rule-based participation is defined as the use of formal voting rights that are enshrined in organisational rules (governing documents such as statutes, constitution, articles of association etc.). Also, organisations may differ in the extent to which executive boards are composed of members as opposed to professionals recruited from outside of the organisational membership. In this thesis the focus is on board professionalisation, defined as the external recruitment of skilled volunteers with professional competencies, such as the skills, experience, and knowledge relevant for organisational maintenance, to fill in unpaid positions on the executive organ. Consultative participation is defined as the opportunities for members to comment on organisational matters and programmatic priorities. Unlike rule-based participation which entails the exercise of voting rights and results in binding decisions for the leadership, consultative participation does not generate binding outcomes. Leaders are free to tailor opportunities for consultative participation in line with an organisation's needs.

Steen-Johnsen et al. (2011, 565) suggest that we can learn much about how agency is organised and goals attained by studying internal governance structures across different national contexts of civil society, subsectors, and non-profits. In order to answer my research question, the study focuses on two countries – the UK and the Netherlands – which represent different traditions of non-profit law and contrasting regulatory regimes. The UK is representative of the common law non-profit tradition, which is a relatively complex and constraining regulatory environment in comparison to the Netherlands, which is considered to be a permissive regulatory environment and representative of the civil law non-profit tradition. The UK model of charity law and regulation has been followed by

other countries in the Anglo-Saxon world (Phillips and Smith 2014). The countries in this cluster have experienced substantive reforms of their non-profit law in the last decade and non-profit organisations in these countries have been subject to converging pressures in terms of increased accountability and oversight (Harding et al. 2014, 2; Phillips and Smith 2014). Therefore, findings about the impact of non-profit law on organisations' internal governance in the UK are instructive for organisations in similar legal contexts. Dutch non-profit law remains largely static, with changes mainly concentrated in fiscal laws that regulate tax beneficial status. This is reflective of other developed democracies falling within the civil law non-profit tradition.

The organisations selected in the two countries are ten small⁵ non-profit membership organisations that operate on national level. Six organisations were selected in the UK and four organisations in the Netherlands that operate in the field of environment and health, these being two policy fields related to different availabilities of state funding and organisational density. Health organisations organise direct interests of members (patients or health professionals), whilst environmental organisations organise broader social interests. The selected organisations operate in different legal forms depending on the legal regime (common law or civil law) and differ in the configuration of indirect benefits, some having all indirect benefits (legal personality and tax beneficial status) whilst others one indirect benefit or none. Smaller national non-profit organisations are the most common type of membership organisation. The organisational literature on interest groups has focussed on large and dominant groups (Fraussen and Halpin 2016), whilst the third sector literature has focused on organisations of various sizes operating at both local and national level. This study enhances understandings of the internal governance of smaller organisations, and organisations which vary in their core mission and type of membership.

Analytically, the study synthesizes legal analysis and in-depth organisational level analysis, which is a novel approach. Methodologically, the study implements a qualitative comparative approach, drawing on multiple sources of data including laws, bylaws, expert interviews, publicly available documents, newsletters,

⁵ Small in terms of membership size, ranging from min.250 to max. 10000 members, and not in terms of budget or staff size.

websites, 30 semi structured interviews and additional e-mail correspondence with organisational actors. The study recruited interviewees who take different positions in the organisation as an attempt to overcome the executive bias commonly present in the study of non-profit groups.

In the next section, I will firstly discuss the relevance of studying the internal governance of non-profits and the gaps in the literature on non-profit law, the third sector, and interest group research that I aim to address. The chapter ends with an overview of the following chapters of the thesis.

1.2. Why Care about the Internal Governance of Different Non-Profit Organisations?

Why is it important to understand if and how law affects formal voting rights and board professionalisation? Why does it matter if the law incentivises the adoption of a governing model with a prominent role for members in decision making (membership centred model) over a leadership centred model with centralised decision making and a leadership composed of externally recruited professionals? Both political theorists and social scientists have associated non-profit membership organisations with important social and political benefits (Warren 2001; Skocpol 2003; Salamon and Flaherty 1996; Dekker 2014). Drawing on Warren (2001) we can distinguish between individual democratic effects from membership involvement in internal governance, and political system (institutional) effects underlining the different functions that political and service-oriented groups play in contemporary democracies.

All non-profit membership organisations – independent of the type of membership and their core function e.g. advocacy groups, service providers as well as inward-looking leisure groups – are valued for the opportunities that they provide for the development of broad political and civic skills (Freise and Hallmann 2014; Warren 2001). Through active involvement in non-profit membership organisations, citizens can enhance their “sense of efficacy or political agency, information, political skills, capacities for deliberative judgement, and civic virtues.” (Warren 2001, 71). This understanding of democratic effects is based on a Tocquevillian perspective on associations as schools of democracy and the assumption that

social participation in groups is democratically relevant (Jordan and Maloney 2007, 2) because it generates political involvement (Dekker 2014, 46). According to Dekker (2014, 46), through their participation in associations:

“People learn to participate in a meeting, to chair a meeting, to write a letter etc. [...] People also learn to tolerate and to deal with diverging opinions; they become informed about what is happening in their neighbourhood and in the wider society; the organisation provides social contact; it might broaden the sphere of interest, etc.”

Therefore, understanding whether the development of some forms of membership involvement such as rule-based participation and board professionalisation are more likely in some legal regimes than in others is important.

Freise and Hallmann (2014, 1) argue that contemporary non-profit membership organisations satisfy three core functions in the political system: 1. social integration of citizens, 2. the representation of citizen interests in front of decision makers and, 3. the delivery of social services to citizens. From a political system perspective, non-profit membership organisations are valuable insofar they shape the policy agenda in accordance with citizens needs and because they “provide services that reflect the true needs of the people they serve” (Guo and Zhang 2011, 325; Jordan and Maloney 2007, 2). Representational capacities, defined as the potential of organisations to “‘act for’ and ‘stand for’ particular constituencies” (Guo and Zhang 2011, 329; Guo and Musso 2007) are also important for advocacy and service-oriented organisations to be able to articulate citizens’ concerns in the public sphere and effectively shape, monitor and implement policy in line with members interests.⁶ Having leadership elections and member-led boards is not only important for devising organisational programs and services in line with members interests (Guo 2018), but also for assuring organisational continuity through membership retention. Some authors have argued that the decline of organisations with grassroots members (Putnam 2000, 49; Schlozman et al. 2015) and the increase of “mailing list” organisations with “check book” membership (Putnam 2000, 51; Skocpol 1999; Jordan and Maloney 2007) has led to a decline in social capital (Putnam 2000) and the quality of democracy (Skocpol 2003). Therefore, it is important to understand whether the

⁶ Warren (2001, 78, 83) calls these democratic effects ‘public sphere’ and ‘institutional’ effects of associations.

state in developed democracies, through legal means – intentionally or unintentionally – shapes the internal governance of organisations towards an enhanced or diminished role of members and constituencies.

In this thesis, whilst I argue that membership involvement is important for both service providing organisations and political groups (see Guo 2018), I agree with Halpin (2006; 2010) that internal democracy is more-or-less important for different types of groups depending on their membership type. I recognize that for political groups that represent interests beyond the direct membership and rely on solidarity as “a nondemocratic form of political representation” (Halpin 2010, 85), representational capacities are less important.⁷ At the same time, I want to stress that this does not mean that groups that represent broader social interests – such as environmental groups – do not involve members in governance and that they do not develop representational capacities.⁸ In line with Guo and Musso (2007) I expect that most non-profit organisations involve members to some extent and hence, exhibit some level of representational capacity. This can be limited to maintaining channels for communication with members and occasional opportunities for non-binding consultation on organisational policy and agenda, something that Guo and Musso (2007) call ‘participatory representation’. The thesis explores the variation of governing models across groups with different missions and membership types operating under *different legal regimes*.

⁷ Halpin (2006; 2010, 88, 95) proposes that not all types of organisations should be evaluated against the internal democracy ideal because some organisations do not represent the direct interests of members. However, in some groups that represent interests beyond the direct membership, it is not clear if members do not have direct concerns that the leadership want to take on board. For example, an environmental group which aims to protect marine life and coastal areas may organise both members that are directly affected by pollution on the coast (i.e. beach users, surfers etc.) and members that are not directly affected but are concerned about the issue. While the group advocates for a broader social issue which concerns a broader constituency including non-human subjects, it should also cater to the direct concerns of members living in coastal areas. The political efficiency of the group will depend on the expertise it mobilises in terms of scientific reports and the mobilisation of support from the wider public. Nonetheless we can still ask the question: to what extent are members’ concerns reflected in the organisational agenda, because there are indeed members who join the organisation due to their direct interests. This shows that even in so called ‘solidarity groups’ there is a potential for ‘meaningful’ membership involvement beyond check book participation, and this is important for both the legitimacy of the group in front of stakeholders and the maintenance of members. Whilst some members may be content with check book participation, others may expect opportunities for membership involvement.

⁸ In fact, Binderkrantz (2009) in her study of internal democracy of groups in Denmark does not find significant difference between public interest groups (solidary groups) and groups that represent direct members interests (sectional groups).

1.3. Identifying Gaps: Studying the Intra-Organisational Consequences of Non-Profit Law

Non-profit regulation has been studied either from a legal and policy perspective or from an intra-organisational perspective focusing on the potentially negative effects of legal pressures on non-profit organisations. Research on legal forms has been conducted largely by legal scholars who focus on describing the requirements for accessing and maintaining these forms in different legal regimes, and their evolution over time (Salamon 1997; Warburton 1986; van der Ploeg 2009; Cordery et al 2016; Stewart QC et al. 2011; van der Ploeg et al. 2017). Similarly, in terms of tax benefits, the discussion is centred on the variation of regulation across legal regimes (see for example Moore 2005; Breen et al. 2009; Moore, Hadzi-Miceva and Bullain 2008; Phillips and Smith 2014). On the organisational side, whilst third sector and interest group scholars have extensively investigated the impact of state funding and related regulatory constraints on the organisational form and practice of non-profits, the effects of legal regulations related to legal forms and indirect benefits remain unknown. To remedy these gaps, this thesis firstly adopts an organisational perspective on the study of non-profit law related to legal forms and indirect benefits in the UK and the Netherlands. This means that the thesis does not evaluate the law vis-à-vis its conformity with internationally formulated standards of non-profit law and does not evaluate the mechanisms and efficiency of enforcement across regimes. Instead, it analyses the legal constraints from the perspective of intra-organisational governance. The focus is on the legal constraints the organisations have to comply with to be able to operate in the legal form chosen by the organisation, and to maintain indirect state benefits. In addition, the study synthesizes the legal analysis with organisational level analysis to be able to assess whether and how legal constraints shape aspects of intra-organisational governance.

Legal and policy approaches are useful because they help us understand the development and variation of non-profit law between countries and portray the increasing complexity of legal environments in contemporary democracies (Bolleyer 2018, 15). Comparative research on classifying regulatory models and

regimes for non-profits has been a growing area of interest (see Salamon 1997; O'Halloran et al. 2008, Bloodgood et al. 2013; Breen et al. 2016; van der Ploeg et al. 2017; Bolleyer 2018).⁹ This thesis, to be able to explore empirically the potential consequences from non-profit law on internal governance, relies on knowledge about the legal environments for non-profits generated within the non-profit policy and legal literature. However, legal and policy scholars often emphasize the need for improved regulation and demand more accountability from organisations towards the state, and by that they demonstrate a limited interest in the potential consequences of this trend on intra-organisational governance. They focus primarily on the efficiency of oversight, prevention of abuse of state benefits, and organisational compliance (Bolleyer 2018, 12-13). For example, there is a growing literature particularly focussed on the Anglo-Saxon cluster of countries that highlights the evolution of accountability requirements, the effectiveness of regulatory tools, and the regulatory compliance of charities and other non-profits (Irvin 2005; Breen 2013; Hyndman and McMahon 2010; Fletcher and Morgan 2013; Phillips 2013, Phillips and Smith 2014, McDonnell and Rutherford 2018). This thesis represents a departure from such approaches concerned with regulatory compliance, and instead, it is interrogating the organisational consequences of increased legislation.

Third sector researchers, unlike policy and legal scholars, have been focused mainly on the effects on organisational form and behaviour resulting from potentially restrictive non-profit regulation¹⁰ (Bolleyer 2018, 12-13; Bolleyer and Gauja 2017) and legal regulation related to contracting public services (Smith 2011; Smith and Smyth 2010; Toepler 2010). Regulatory constraints on political activities have been enshrined in public benefit regulation, lobbying regulation, and other rules related to combatting terrorism. In addition, dependence on state funding has affected groups' political activities (Chavesc et al. 2004, 296; Lang 2012; Leech 2006; Lu 2016; Almog-Bar and Schmid 2013, 17). The increase of state funding availability for non-profits has raised repeated concerns regarding

⁹ Also, few studies have focused on mapping and comparing self-regulatory initiatives of the non-profit sectors across countries (Breen et al. 2016, Bies 2010).

¹⁰ The third sector literature has focused on the increased regulatory constraints related to counterterrorism measures in developed democracies (Bloodgood and Tremblay - Boire 2010; Bolleyer and Gauja 2017). The interest group literature has been primarily concerned with the consequences of different lobbying regulations (Lang 2012; Ozymy 2010; Holman and Luneburg 2012; Keeling, Feeney and Hogan 2017).

their increased centralization, professionalization and bureaucratization (Lang 2012; Macmillan 2010, 5; Toepler 2010; Salgado 2010; Suarez 2010). The increased involvement of non-profit organisations in public service delivery and their operation under quasi market conditions has opened a line of research which highlights the hybridization of organisational characteristics in non-profit groups (Hasenfeld and Gidron 2005; Billis 2010; Hustinx et al. 2014; Smith 2014). These approaches are useful because they highlight the potential consequences of legal regulation on organisational behaviour and organisational form, and they advance an organisation-centred perspective towards the analysis of non-profit law. However, as mentioned before, limited attention has been paid to the consequences on internal governance from increased exposure to increasingly complex reporting and accountability requirements related to the maintenance of indirect state benefits, which are relevant for many non-profits within the population, including service-oriented and advocacy-oriented organisations (but see Bolleyer 2018).

There is negligible representation in the literature of an investigation into the influence of legal forms and the maintenance of indirect benefits from an intra-organisational perspective, which is the main concern of the thesis. In terms of legal forms, the only study I have encountered on this topic is limited to the analysis of legal forms in the UK vis-à-vis the normative model of associational democracy (Smith and Teasdale 2012). In terms of the organisational consequences of regulation related to indirect benefits, an exception is Morgan's (1999) study which focuses on the responses of smaller unincorporated charities in the UK when exposed to the new accountability and reporting regime introduced with the 1993 Charities Act and the Charities (Accounts and Reports) Regulations 1995. He observed how changes in the regulation led to the development of the treasurer and the bookkeeper roles in small charities including the regulatory push towards semi-professionalisation of charity treasurers via accountancy and software training (Morgan 1999). Finally, in a chapter on government funding policies Toepler (2010, 133) suggested that direct monetary benefits have a stronger effect on organisational form than indirect state benefits. He hypothesized that the receipt of contracts has a strong effect on the bureaucratization of the organisation, in turn the receipt of grants has a

moderate effect and the receipt of tax credits has a weak effect. These hypotheses have not been empirically assessed. The three studies, each in its own way, serve as an inspiration for this thesis.

1.4. Situating the Study within the Non-Profit Governance Literature

This thesis combines theoretical and conceptual insights on internal governance derived from third sector and interest group literatures.¹¹ The two literatures overlap in their interest in membership involvement and professionalisation of non-profit membership organisations. The third sector literature is concerned with membership engagement and the representational capacities of different types of non-profit organisations (Bramble 2000; Cnaan 1991; Guo 2007; Guo and Musso 2007; Holmes and Slater 2011). Similarly, interest groups scholars have demonstrated interest in studying intra-organisational democracy and forms of membership involvement across different types of interest groups (Maloney 2009; Maloney and Jordan 2007; Binderkrantz 2009; Holyoke 2013; Lansley 1996; Barakso and Schaffner 2007). Both literatures have studied the impact of external factors on organisational adaptation through professionalisation (Hwang and Powell 2009; Klüver and Saurugger 2013; Saurugger 2012; Salgado 2014). This thesis advances the knowledge on the relation between a specific external factor – non-profit law – and membership involvement, both rules-based and consultative, and a specific subtype of professionalisation – board professionalisation – by which it contributes to both literatures.

In terms of internal governance research, third sector scholars have focused largely on non-profit boards, their evolution, relations with other actors, composition, and functions (Abzug 1996; Wood 1992; Abzug and Galaskiewicz 2001; Ostrower and Stone 2006; Guo 2007; Ostrower and Stone 2009; Cornforth and Macmillan 2016; Cornforth 2003; Cornforth 2012). Cornforth (2011, 1129) has identified the need for a broader conceptualisation of non-profit governance

¹¹ The third sector literature focuses on both service and advocacy oriented non-profit organisations in the context of topics such as philanthropy, volunteering and service-delivery, whilst the interest group literature focuses on interest groups, including non-profit and for-profit entities that have the aim of influencing the public policy agenda. The interest group literature focuses mainly on understanding policy influence and success.

that goes beyond studying board behaviour and that focuses on how governing structures evolve under external factors:

“A broader conceptualization of non-profit governance needs to recognize that boards are part of a broader governance system, including regulators, auditors, and other key external stakeholders, such as funders, that can place accountability requirements on an organisation and its board. It also must recognize more fully how various internal actors such as managers, staff, members, and other specially constituted bodies like advisory groups may contribute to carrying out governance functions. This opens up a variety of new research questions about how different regulatory and funding regimes influence governance structures and practices within non-profit organisations and how different actors, such as managers, membership and advisory groups, contribute to carrying out different governance functions and how they manage the relationships and inevitable tensions between them.”

This thesis aims to address these gaps in the literature by investigating how non-profit groups organise internally across contrasting legal systems, with a focus on various aspects of internal governance, and how their governing models evolve under – different and often increasing – legal pressures.

Some interest group scholars suggest that little is known about the way in which interest groups are governed internally (Berry and Wilcox 2009, 60) and that research on the internal governance and structure of membership associations is “thin relative to research on member entry and retention” (van Puyvelde et al. 2016, 895). In the past, the population ecology approach has been widely employed to investigate how environmental pressures affect interest group populations’ formation and survival (Gray and Lowery 2000; Halpin and Jordan 2009; Halpin and Thomas 2012). Halpin (2014, 1) points out that issues of organisational design in the interest group literature “are – and remain – themes for the footnotes of studies of ‘other’ things like influence, formation, maintenance, and population- level analysis.”¹² Halpin (2014, 4-5) conveys how the literature on organisational formation has focused largely on explaining the collective action problems of establishing a group, whilst the organisational maintenance literature focuses on the development of organisational forms from a dominantly incentive exchange perspective¹³ (see Olson 1971; Moe 1980). He (2014, 5)

¹² Whilst this still holds true, there has been a renewed interest in studies of organisational form and change of interest groups in the last decade (see Minkoff et al. 2008; Fraussen 2012; Fraussen 2013; Halpin and Daugbjerg 2013; Halpin 2014).

¹³ Specifically, the organisational maintenance literature has developed an understanding of organisational form and development as a result of the leadership’s rational responses to the changing motivations of membership through adjustment of incentives (i.e. material, purposive, solidary) (Halpin 2014).

identifies the need for research that goes beyond the incentive exchange perspective and investigates how interest groups “adjust or modify the organisational models they commence their ‘careers’ with to survive.” This thesis adopts a lifecycle approach to the study of internal governance and follows changes in response to legal constraints. In that sense this thesis not only responds to calls in the literature for understanding organisational form over time but also expands the scope by looking at organisational changes in response to external pressures.¹⁴

1.5. Thesis Outline

In this chapter I have presented the topic of my research and my research question. I have also discussed the relevance of studying the internal governance of non-profit membership organisations. Finally, I have situated this study within the literature on non-profit regulation, as well as third sector and interest group literatures concerned with organisational form and internal governance. In this last section I present the chapter breakdown.

In **Chapter two**, I define and discuss the central concepts of the study and the general theoretical perspectives. I also elaborate on theoretical expectations about the way regulation related to legal forms (the legal regime) and indirect benefits shapes aspects of internal governance. This study relies on institutional theory of organisational isomorphism and resource dependence theory and incorporates the idea of the organisational entrepreneur as a mediating factor through which law affects internal governance. The main argument is that non-profit law shapes the governing model of an organisation by affecting two central aspects of governance: formal voting rights and their use and board professionalisation. The first expectation of the thesis is that the regulatory requirements related to the legal forms available for membership organisations have consequences for the adoption of formal voting rights and rule-based participation. The second expectation is that regulatory requirements related to maintaining indirect benefits have consequences for board professionalisation. The final expectation of the thesis is that opportunities for consultative

¹⁴ For research on organisational adaptation to state funding pressures see Guo (2007), Fraussen (2013), Salgado (2010).

participation vary across different governing models. The organisations' governing models flux between membership centred, where members engage in rule-based participation and are represented on the boards, to leadership centred model where members do not engage in rule-based participation and have boards dominated by external professionals.

In **Chapter three** I present the overall methodological approach and the research design implemented to assess the theoretical expectations presented in the second chapter. Analytically, the study synthesizes a legal analysis of available legal forms and regulatory constraints related to indirect state benefits, and an organisational level analysis of non-profit governance in ten smaller non-profit membership organisations in the UK and the Netherlands. Chapter three explains the two levels of case selection, including countries and non-profit organisations. Furthermore, it details the legal and organisational data with particular focus on document analysis and semi-structured interviews. The chapter also describes the stages of data analysis, the operational definitions of the central concepts and the alternative factors accounted for in the analysis.

Chapter four is the first of five chapters in which I develop my empirical analysis. Chapter four conveys a legal analysis of the legal forms available for non-profits with members and the regulatory constraints related to the maintenance of indirect benefits in the UK and the Netherlands. The chapter first presents the general legal set-up for non-profit membership organisations in the two countries. Then it describes the differences in requirements for members' rights to participate at an annual general meeting and appoint members of the board. Furthermore, it presents the analysis of differences in the intensity and character of requirements for maintaining legal personality and tax beneficial status (reporting and monitoring). In the end, the chapter concludes with a summary of findings and country-specific expectations. The analysis shows that in the UK adopting formal voting rights for the wider membership i.e. right to participate at an annual general meeting and elect the board in organisations operating in any legal form available is optional, whilst in the Netherlands the legal forms available for membership organisations grant special powers to the members to control and elect the board and attend the annual general meeting. Reporting requirements and statutory supervision are higher and more constraining for

organisations which have ‘all indirect benefits’ in the UK and the Netherlands, while organisations operating with only legal personality or ‘no indirect benefits’ are exposed to lower regulatory constraints in the two countries.

Chapter five builds on the findings of the legal analysis related to the differences in requirements for members’ rights for available legal forms in the two countries. The chapter engages with the first aspect of internal governance of interest to the study - adoption and change of formal voting rights of non-profit membership organisations. Based on the legal analysis, the expectation is that in the UK organisations are more likely to adopt governing models which do not grant members formal voting rights, whilst Dutch organisations are more likely to grant formal voting rights to their members. The chapter firstly presents the analysis of four organisations with legal personality and two organisations without legal personality in the UK, and secondly, it presents the analysis of four Dutch organisations with legal personality. The chapter concludes with a summary and discussion of the findings and their implications. The findings show that organisations studied in the UK have more diverse governing structures than those in the Netherlands. In the Netherlands, as expected, the four organisations under study have a democratic structure where the members enjoy formal voting rights.

Chapter six assess whether formal voting rights as stipulated in an organisation’s governing document are used in practice (i.e. rule-based participation) across the ten organisations. Organisations are assessed on whether they hold an AGM for the wider membership, and whether members elect the members of the executive. The expectation is that organisations with formal voting rights stipulated in the governing documents will experience some level of rule-based participation by members. The chapter firstly presents the findings on rule-based participation in the British and Dutch organisations which have formal voting rights. And secondly it assesses the rule-based participation of organisations which limit such rights to members of their executive, in order to understand what led to this change. The findings show that six out of seven organisations which granted formal voting rights for members have – as expected – some level of rule-based participation by their wider membership. Organisations where formal voting rights were limited to the executive board, before the formal change

occurred demonstrated limited rule-based participation or an absence of such participation by their wider membership.

Chapter seven builds on the findings of the legal analysis related to analysis of differences in the intensity and character of requirements for maintaining indirect state benefits - legal personality and tax beneficial status. The chapter engages with the second key aspect of internal governance of interest to the study - board professionalisation. The organisational level assessment aims to capture whether organisations representative of different indirect benefit configurations show signs of board professionalisation. The expectation is that non-profit membership organisations maintaining indirect benefits which are exposed to high reporting requirements and external supervision will undergo board professionalisation, whilst organisations which are exposed to lenient reporting requirements and little or no external supervision will not. The chapter presents the findings for organisations in the UK and the Netherlands exposed to high regulatory constraints, followed by the findings for organisations exposed to low regulatory constraints or none in the two countries. In line with the theoretical expectations, the findings show that the three charitable companies in the UK which are exposed to high regulatory constraints and supervision, underwent professionalisation of the board. In the Netherlands, we find evidence that organisations operating with 'all available' indirect benefits (i.e. formal associations with ANBI status) have professionalised their boards, however, there is no evidence that this happened in relation to increased exposure to high constraints. The findings show that two out of three organisations exposed to low regulatory constraints in the UK, as expected, do not show signs of board professionalisation through external recruitment of professionals, whilst organisations exposed to low regulatory constraints in the Netherlands did not undergo board professionalisation.

Chapter eight builds on the findings from Chapter six and seven, and illustrates how organisations cluster in terms of their governing model based on the two key dimensions of governance: rule-based participation and board professionalisation. The chapter then investigates whether opportunities for consultative participation differ across organisations with different governing models. Four organisations, three in the UK and one in the Netherlands, have a

leadership centred model of governance, with an absence of rule-based participation and presence of board professionalisation. The expectation is that organisations with a leadership centred governing model offer many opportunities for consultative participation in order to maintain the link with their members. Four organisations, two in the UK and two in the Netherlands have a membership centred model of governance with rule-based participation and an absence of board professionalisation. The expectation was that organisations with a membership centred governing model offer few opportunities for consultative participation because they already invest in maintaining rule-based participation. The analysis shows mixed results across the different governing models, which indicates that consultative participation is shaped by policy specific dynamics and is used to both complement and substitute rule-based participation and member participation on the board.

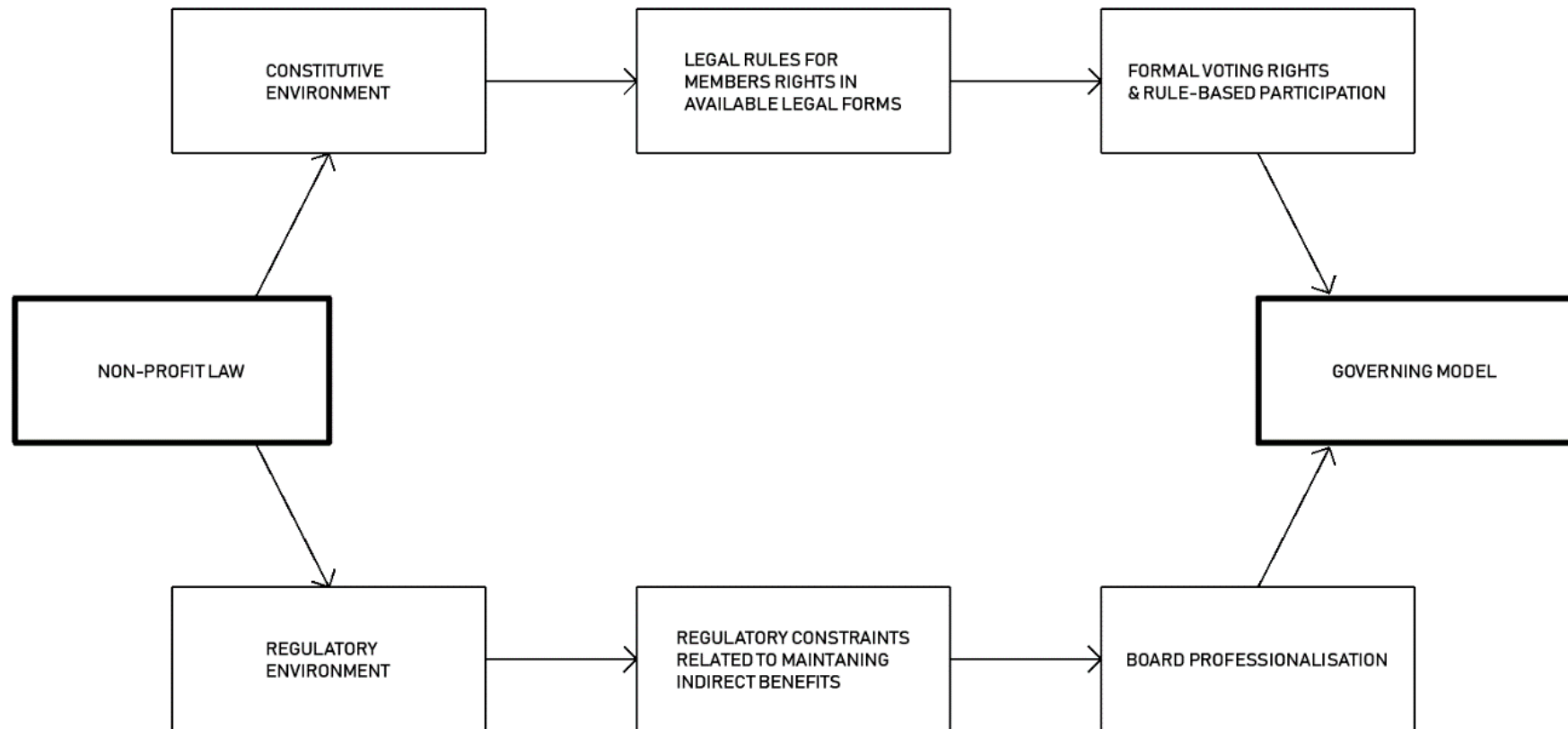
The thesis concludes with a summary of findings and a discussion of the normative, theoretical and empirical implications of the study. The final words are dedicated on avenues for future research.

2. Theoretical Framework

2.1. Introduction

This chapter presents the theoretical framework which guided the empirical study. The main assumption underpinning this thesis is that organisations do not adopt or change a governance model in a vacuum and that the relations between key internal actors (members and leadership) are structured by law, and the roles these actors play in organisations are conditioned by legal pressures. The aim of this thesis is to disentangle the possible ways in which non-profit regulation affects internal governance of non-profit membership organisations through constituting certain legal forms and regulating the maintenance of indirect benefits. The first main argument is that the regulatory requirements related to the legal forms available for membership organisations have consequences for the adoption of voting rights in organisations' statutes, defined as the rights of ordinary members to attend the annual general meeting and elect the executive board, and the use of these formal rights in practice. The second main argument is that regulatory requirements for maintaining indirect benefits have consequences for board professionalisation, meaning the recruitment of skilled volunteers outside of the organisational membership to fill in unpaid positions on the executive organ. The thesis furthermore argues that legal regulation by shaping these two aspects of governance – formal voting rights and their use and board professionalisation – defines the governing model of an organisation. The main theoretical argument is presented in Figure 1.

Figure 1: Theoretical Argument



The organisations' governing model can range from membership centred, where members engage in rule-based participation (i.e. active usage of formal rights granted in organisational statute) and are represented on the boards (i.e. there is absence of board professionalisation), to leadership centred model where members do not engage in rule-based participation and have boards dominated by external professionals.¹⁵ The argument is that non-profit regulation, depending on the legal forms available in the legal regime and the configuration of indirect benefits the organisations maintain, will encourage one model of governance over the other. At last, the thesis develops expectations about opportunities for consultative participation across different governing models. The final argument is that organisations with leadership centred models will offer many opportunities for consultative participation, whilst organisations with membership centred models will offer only few opportunities for consultative participation.

In this chapter, firstly, I present the broader theoretical lens through which the relationship between law and organisational governance is theorized. Secondly, I define the central concepts of the study. Thirdly, the chapter elaborates on the specific theoretical expectations about the way regulation related to legal forms (the legal regime) and indirect benefits shapes features of internal governance. Because of the exploratory nature of the study, theoretical expectations are formulated as useful 'heuristic tools' to structure the empirical analysis, and do not suggest that the study will engage in theory testing along a probabilistic logic.

2.2. Theoretical Perspective on the Law and Organisational Governance

To be able to perform their core functions, organisations first and foremost have to ensure their survival (Wilson 1995; Lowery 2007). The state enhances the chances of survival of different voluntary organisations by offering state benefits (Fraussen 2013, 408). Moreover, the state defines the choice of legal forms in which organisations can maintain themselves. The main argument is that regulation affects the internal governance in two ways: through the available legal

¹⁵ There is a continuum between membership centred and leadership centred models and organisations can be associated with one or another. Some cases might not fully be associated with a model but be closer to one end. For example, if an organisation has rule based participation whilst the executive board is increasingly professionalised, then the organisation will not fully match the membership centred model but be closer to it than to the leadership centred model.

forms within the non-profit regime (constitutive function of law) and through regulatory constraints related to the maintenance of indirect state benefits (regulatory function of law).

Analytically, the study synthesizes legal analysis of non-profit law and organisational level analysis. Theoretically, it relies on institutional theory of organisational isomorphism (DiMaggio and Powell 1983) and resource dependence theory (Pfeffer and Salancik 1978) in conceptualising organisational response to the legal environment. In doing so I am following other studies of non-profit organisations that have shown the complementarity of the two approaches (Guo 2007, 461; Frumkin and Kim 2002; Mosley 2012).

Neo-institutional theory of organisational isomorphism assumes that organisations will modify their characteristics to be compatible with external pressures and will converge in the same direction with other organisations facing the same type of pressures (Di Maggio and Powell 1983, 150; Ashworth et al. 2007, 169; Rauh 2010). This means that organisations operating within the same institutional environment will become homogeneous in terms of their governing structures (Anheier 2005, 147).¹⁶ The focus here is on the coercive pressures of regulation exercised by the state (Di Maggio and Powell 1983; Ashworth et al 2007, 167), because the concept of coercive pressures is a central tool for understanding the impact of regulation on internal governance. Non-profit membership organisations operate in an organisational field where the state - through its institutions - imposes certain regulatory constraints (*coercive pressures*) in return for indirect benefits and organisational legitimacy:

“In many case studies, coercive isomorphism turns out to be a critical element in the evolution of non-profit organisations. When organisations are subjected to external coercive scrutiny, evaluation, and regulation, they tend to react defensively and gravitate toward isomorphic transformation. As the pressures from the outside grow, organisations often find ways to either diffuse or eliminate this pressure by changing their internal practices. One of the easiest ways for organisations to change is to adopt those routines and structures that are defined by law or government agencies as legitimate - doing so may ensure survival by minimizing conflict” (Frumkin and Kim 2002, 2).

¹⁶ This vision of organisational change is representative of sociological institutionalism and the ‘cultural’ approach in organisational theory (Hall and Taylor 1996; Lowndes and Roberts 2013, 30).

Whilst the focus is on the coercive pressures, the study recognizes that the concepts of normative and mimetic pressures can be useful in understanding leadership choices that diverge from the expected direction. Leaders who are motivated by professional norms will enhance regulatory compliance and mimic other organisations which they perceive as legitimate and efficient. According to institutional isomorphism, *normative pressures* are exercised through transmission of widely accepted norms i.e. through professions (Zucker 1987, 444). Or in the words of Mosley (2012, 845) “[n]ormative isomorphism occurs as a feature of professionalisation, specifically shared understanding due to similar formal education and professional networks”. Moreover, organisations can adapt by imitating rules and practices that are successfully applied by other actors in the organisational field (*mimetic pressures*) (Zucker 1987, 444). Organisations copy other organisations which are perceived to have higher legitimacy (Mosley 2012, 845).

In addition to coercion, the state also uses inducements to achieve its goals (Scott 1987, 509). Influence through inducements means that organisations adopt certain features and modes of behaviour in return for incentives offered by the state (Scott 1987, 504). Resource dependency theory proposes that organisations are constrained by the environment (external forces) because they depend on it for survival (Pfeffer and Salancik 1978; De Corte and Verschuere 2014). More specifically, resource dependence theory aims to “explain how an organisation’s strategy, structure, and survival depend on its resources and dependency relationships with external institutions” (Hodge and Piccolo 2005, 172). The basic idea behind the resource dependence logic is that, when the organisation receives resources from the state, which are crucial for its stability and survival (Pfeffer and Salancik 1978), the organisational structure and strategy will be adjusted in line with the demands placed by state institutions (Hodge and Piccolo 2005, 174).

According to the adherents of sociological institutionalism, in order to survive organisations adopt organisational structures which will “enhance the *social legitimacy* of the organisation” (Hall and Taylor 1996, 949). According to resource dependence theory, to be able to maintain state resources, organisations should adopt *efficient organisational structures* (Scott 1987, 502–503). The two

motivations are not mutually exclusive. For example, in order to maintain access to state funding the organisation is mandated by law to conform to the obligations in the funding contract, but also organisations voluntarily choose to comply with certain norms of behaviour (quality of reporting and accountability, insiders political strategy etc.) in order to establish legitimacy in front of stakeholders and maintain their eligibility to continued funding from the state (Scott 1987, 503). Even though there is a disagreement of what motivates leaders to initiate organisational changes, whether this is related to economic efficiency or social legitimacy, the bottom line is that organisations adapt to external pressures to be able to survive. In other words, organisations “conform because law commands them to do so and imposes sanctions for noncompliance” (Edelman and Suchman 1997, 496). And the compliance is driven either by the material needs of organisations or the need for social legitimacy, or by both considerations. *Organisations operating in the same legal forms and exposed to the same regulatory constraints will tend to have high degree of organisational similarity, in line with the assumptions of institutional isomorphism.*

This study does not assume that law ‘causes’ organisational responses automatically and recognizes the role of leadership in mediating change. The idea of the group leader as entrepreneur¹⁷ as developed by Terri Moe (1980, 37, 122) defines the entrepreneur as a rational actor who is driven by both economic considerations (e.g. financial sustainability of the organisation) and non-material motives (e.g. ideology and democratic values). The main goal of the entrepreneur is to ensure group survival by both managing exchange relationships with the members within the administrative structure and realising organisational goals in the political system (Moe 1980, 37). Building on the idea of the leader as an organisational entrepreneur, I agree with Halpin (2014, 105) that leaders cannot automatically determine the characteristics of the group as they wish, but they can shape the direction of organisational change by introducing their interpretations of the environment and, when circumstances allow, initiating change in accordance with their perceptions. “In this sense, legal regulation is often “enacted” (Weick 1979) at a fairly local level, with intraorganisational professional [leadership] playing a significant part in determining which

¹⁷ He uses the term political entrepreneur (Moe 1980, 36).

institutional norms and scripts get reflected in organisational structures [...]” (Edelman and Suchman 1997, 499). Nevertheless, the main emphasis of this study is not on the role of agency, but on the potential role of law in the adoption of key features of governance.

2.3. Conceptual Framework

In the next section I will present the conceptual framework of the study. First, I will define the term non-profit membership organisation as used in this study. Secondly, I will provide definitions of non-profit regulation and specify the terms – legal forms, indirect benefits and regulatory constraints. Finally, I will define non-profit governance and specifically the aspects of interest: formal voting rights and rule-based participation, board professionalisation and consultative participation.

2.3.1. Non-Profit Membership Organisation

Non-profit membership organisations are part of the diverse organisational field constituting civil society¹⁸, a “functionally differentiated sphere of society” (Enjolras 2015, 3), distinct from the private economic sphere - the family and the state (Jenkins 2006; Anheier 2005). In this study non-profit membership organisations are defined as self-governing, organised, private, and voluntary organisations with membership, which pursue aims that will benefit either their members or the broader public. This definition is based on the structural operational definition proposed by Salamon and Anheier (1997, 33-34). The strength of this definition is in its ability to encompass a wide set of organisations that share structural and operational characteristics across different geographical contexts, and it is particularly useful for cross-national research (Salamon and Anheier 1997, 38-40). This definition is one of the most regularly used in non-profit research (Guo and Zhang 2011, 326).

Importantly, the definition of non-profit organisations used here additionally includes the element of membership. To study changes in membership involvement, the study has to focus on organisations who have the potential to

¹⁸ In the thesis, I will use the term third sector interchangeably with civil society.

engage individuals as collectives (for similar argumentation see Halpin 2010, 31). Members are defined simply as individuals who joined the organisation by accepting its mission and statute. I do not choose to define members through their voting rights in the organisation simply because the aim of this study is to investigate the (often changing) nature of being affiliated with an organisation, which can range from just receiving information of the work of the organisation or certain benefits (e.g. access to facilities; right to training) in return for regular membership fee payments, to having final authority on who will govern the organisation and what kind of programmatic priorities it will pursue (NCVO 2018). Moreover, some membership organisations may provide members with the 'ultimate authority to decide' (Salamon and Flaherty 1996, 13) on paper, while in reality that authority may be exercised differently than what is formally stipulated. Therefore, this study adopts a minimal definition of membership that does not attach any expectations regarding the way they are engaged within the organisation.

Organisations within the scope of this study are 'non-profit-distributing' and exclude 'mutual benefit organisations' such as cooperatives, mutual insurance companies, banking and building societies which have pronounced commercial orientation (Salamon and Anheier 1997, 42). Helmig et al. (2011, 6) group non-profit organisations in two broad categories, organisations which are involved in direct service delivery (i.e. social services, health, education etc.) and those that fulfil expressive functions (i.e. human rights groups, environmental groups, professional groups, business and labour groups etc.). Interest groups or advocacy groups are defined as organisations whose main aim is to influence public policy without competing for public office (Beyers et al. 2008; Halpin 2010, 34; Fraussen and Halpin 2016), and service-providing organisations, existing predominantly to provide services to members and/or the general public (Saurugger 2012). This distinction, even though analytically useful does not reflect the fact that many non-profit organisations are engaged in both types of activities, and some organisations can shift their dominant core purpose during their lifetime (Minkoff 2002). The definition of non-profit membership organisations adopted here is inclusive of organisations with variety of purposes.

Some authors distinguish broadly between *sectional interest groups* which are founded to represent and pursue the interests of their members and *public interest groups* founded with the purpose to benefit the broader public or vulnerable social groups (Salamon and Flaherty 1996, 31). Organisations which are pursuing the interests of its affiliates (which overlap with their constituency or beneficiaries) are also referred to as representative groups (Halpin 2010, 95). Public interest groups are also known as solidarity groups which aim to influence decision making in order to pursue certain collective good (e.g. clean environment, social justice, gender equality) and benefit a broader social basis than their direct members (Berry 1977, 7; Binderkrantz 2009, 659; Weiler and Brändli 2015, 748). In this type of organisation there is often little overlap between the organisational mission and members' benefits (Halpin 2006; Binderkrantz 2009, 659). In the words of Halpin (2010, 95) "the affiliates and the beneficiaries/constituency are mutually exclusive in solidarity groups." The definition of non-profit membership organisations adopted here includes both organisations which predominantly cater to members interests, and organisations which predominantly cater to non-members' interests (e.g. the broader public, future generations, non-human populations).

The organisations of interest in this study are those who are organised, as opposed to informal, loose and temporary gatherings (e.g. citizen initiatives and social movements). The concept of organised groups does not include only formal organisations understood as having specific legal forms. As Salamon and Anheir (1997, 33) rightly point out "[I]nstitutional reality can also be demonstrated in other ways where legal incorporation is either not chosen or not readily available – by having regular meetings, officers, rules of procedure, or some degree of organisational permanence." Therefore, organisations without legal personality are within the scope of the study, as long as these organisations have an established 'institutional reality'. Organisational formation does not always overlap with the moment of incorporation, and this study recognizes that some organisations establish their organisational structures before they acquire legal personality and throughout their lifetime operate in an organised (institutionalised) form.

Non-profit membership organisations as defined in this study are suitable for understanding the impact of accessing and maintaining different state benefits and while the definition excludes mutual benefit organisations, it encompasses a variety of non-profit, voluntary, private and organised groups with different core missions and membership type.

2.3.2. Non-Profit Law

Non-profit law encompasses the rules and directives that aim at constituting the organisational structures and controlling the behaviour of non-profit organisations. The legal regulation I focus on in this thesis encompasses the legal rules constituting available legal forms for non-profit membership organisations and the regulatory requirements the organisation has to comply with in order to maintain indirect benefits as defined in the following section. In the thesis I use law and regulation interchangeably, and by that I refer to statutory legislation enacted by legislatures and (where applicable) case law produced by courts.¹⁹ Non-profit regulation as defined here may be spread throughout different laws (fiscal regulation for public benefit status, laws on associations and foundations, criteria for state funding may be regulated with separate law or bylaw etc.) or it may be contained in one primary law. Only to a limited extent the study refers to *obligatory* rules issued by state institutions or agencies that specify legal constraints in line with primary law. The definition of non-profit regulation adopted here differs from definitions used by public policy scholars who understand regulation as prescriptive rules (see Bolleyer 2018, 33). Moreover, this study is not focusing on self-regulation of non-profit organisations (Bies 2010), but only on mandatory regulation enacted and enforced by state institutions.

Understanding national patterns on non-profit law is important because these reveal the underlying relationship between the state and civil society actors (Adam et al. 2015, 328) and specifically the way in which states constitute and regulate organisations through law. Based on Edelman and Suchman (1997, 479) here I focus on the constitutive and the regulatory function of non-profit law.

¹⁹ Bolleyer (2018, 34) shows that even in common law countries non-profit organisations have been predominantly regulated by statutory legislation which has overwritten case law. Therefore, studying regulatory constraints in these jurisdictions, same as in civil law jurisdictions requires the analysis of statutory legislation.

The law understood as a constitutive environment means that “the law defines the basic building blocks of organisational forms” (Edelman and Suchman 1997, 479) and by that, determines “what types of organisations come into existence” (Edelman and Suchman 1997, 483). Van der Ploeg states that the core aim of private law, and specifically non-profit law is to create rights and obligations which balance the interests of founders, members, donors, employees, clients and the broader public (2009, 3). The different legal forms available for non-profit membership organisations across legal regimes regulate the positions of these interests to each other (van der Ploeg 2009, 3). This is in line with the constitutive function of law that determines the building blocks of organisational structures and the role of actors within them (Edelman and Suchman 1997).

On the other hand, the regulatory function of law is manifested through the active control of organisational behaviour (Peters and Nispen 1998). The law is a tool for social manufacturing: “The legal system (presumably on society’s behalf) is taking the initiative directly to modify organisational behaviour.” (Edelman and Suchman 1997, 483). The law achieves its regulatory (controlling) function through the allocation of benefits and constraints or costs enforced by the state (James 2000, 327). In the policy instruments literature, the focus is mainly on the regulatory function of law and its authoritative element (Bemelmans-Videc et al. 1998; Thomann 2017, 56; see also Howlett 2011). For instance, Vedung’s definition of regulation accentuates this authoritative element: “[R]egulations are measures taken by governmental units to influence people by means of formulated rules and directives which mandate receivers to act in accordance with what is ordered in these rules and directives” (Bemelmans-Videc 1998, 10). Similarly, other authors define regulation as the rules and directives that impose binding requirements, often combined with a mechanism for monitoring and sanctioning regime to assure compliance (Vedung 1998, 31; Adam et al. 2015, 328; Thomann 2017). Hence, regulation has a core substantive component which is directing how one should or should not behave, often accompanied by a coercive component which is setting the extent to which authoritative force will be used to assure compliance (Vedung 1998, 34).

When non-profit membership organisations decide to access state benefits they become subject of legal rules and compliance requirements enforced by various

state agencies such as public registers for private entities, tax authorities, ministries etc. Depending on the stringency of legal regulation, in terms of accountability and reporting requirements and enforcement structures we can distinguish between relatively *constraining and permissive non-profit regulation*. Constraining regulation imposes extensive reporting and administrative requirements in relation to maintaining certain benefit, while permissive regulation implies either lenient reporting and administrative requirements or none at all. The study focuses mainly on legal regulation enacted by legislatures because it aims to capture how organisations adapt in response to widely applied and mandatory legal rules.

2.3.2.1. Legal Forms

The available legal forms for membership organisations are the first important step in understanding the governing structure non-profit organisations adopt and the decision-making power (potentially) given to members. In this thesis *legal form* is defined as the organisational structure organisations adopt from a legal perspective (NCVO 2018). This definition of legal form is suitable because it encompasses both incorporated (with legal personality) and unincorporated organisational structures. The choice of legal form is particularly important for setting the organisational (decision-making) structure of the organisation.

Unincorporated legal forms are usually a subject to judge-made law, while statutory laws specify the characteristics which qualify organisations for legal recognition i.e. incorporated legal forms (Salamon and Flaherty 1996, 4). In some countries, organisations can obtain legal personality (incorporate) qua formation (i.e. acquisition by a private act), while in others the process entails registration in a publicly maintained register (acquisition of legal personality by a public decision) (van der Ploeg 2009, 8). In majority of countries the state is involved in the registration or incorporation of non-profit organisations, however there are few countries where establishing legal personality is a private matter of the founders (van der Ploeg 2009, 8). At the time of legal creation, key matters of internal governance must be defined including the locus of authority in the organisation and the decision-making procedures (Salamon and Flaherty 1996, 13). The locus of authority being the “basic legal issue concerning the internal

management of non-profit organisations” should be clearly set and two main options are available: a governing model in which the ultimate authority rests with members or a model in which the ultimate authority rests with the board which is “self-perpetuating and is not subject to a control of a membership” (Salamon and Flaherty 1997, 21).

Importantly, legal forms available for non-profit membership organisations differ across common law and civil law countries (van der Ploeg 2009). The distinction between associations and foundations was provided by the Roman civil code and these are the two main legal forms available in civil law countries (Simon et al. 2016, 1140). In common law countries, non-profit membership organisations can operate as unincorporated associations or incorporate as limited companies or charitable incorporated organisations (e.g. New Zealand, UK). According to van der Ploeg (2009, 7) civil law countries stipulate in law detailed rules on the internal organisation, whilst the common law countries have fewer specific regulations on regarding the internal structure. In most legal contexts when an organisation is created as a legal person the responsibility for the organisational affairs is assigned to an executive body – the governing board (Renz and Smith 2010, 15-16). This also applies to organisations whose members have the ultimate authority and usually elect a board which has the power to act on their behalf (Salamon and Flaherty 1997, 21). The law may also stipulate how the board will be constituted, and the organisation will specify the rules within its governing document (i.e. constitution, statute, articles of association etc.). Whilst in all legal environments boards are assigned legal and fiduciary responsibilities²⁰, the requirement to grant members with voting rights to elect the board varies across contexts (Tschirhart 2006, 533).

The understanding of legal form adopted here puts an emphasis on the organisational structure understood from a legal perspective, and it encompasses both unincorporated and incorporated legal forms which might differ in the legal requirements related to their governing structure.

²⁰ Fiduciary duty or responsibilities represent a standard of care and good management which exists between someone who is entrusted with authority and someone who depends on the person exercising authority. Fiduciary duties are set in law to assure responsible exercise of power.

2.3.2.2. Indirect Benefits and Regulatory Constraints

Indirect state benefits are the main way in which non-profit membership organisations become entangled with the state. Bullain and Toftisova (2005, 17) define indirect state support as the benefits which enable organisations to use assets for achievement of statutory goals. The literature usually refers to tax benefits as indirect state benefits, however, in this thesis by indirect benefits I refer to *legal personality and tax beneficial status*, both being key privileges which the organisations can access only from the state, and there is no alternative source of such privileges. State privileges, according to Bolleyer (2018, 36), can come in the form of rights and protections given by the state or material benefits. Usually, tax benefits and state funding are regarded as material benefits from the state (Toepler 2010; Bolleyer 2018). And legal personality is regarded as a form of privilege through which the state grants rights and protections for the organisation (Bolleyer 2018, 36). However, because this study aims to focus on the most common state benefits non-profit organisations access in developed democracies beyond direct monetary support I include tax benefits and legal personality together as forms of indirect state benefits.

Accessing legal personality is the process of creation of legal personality through “registration in the civil law systems and incorporation in the common law systems” (Simon et al. 2016, 1147). Through incorporation groups gain the right to open a bank account, gain rights to enter into contracts, own, rent and sell assets. Importantly members of incorporated organisations gain limited liability. Incorporated organisations, in some countries due to their registration with the state are often eligible to apply for funding programs as opposed to unincorporated associations. According to Simon et al. (2016, 1147) “[r]egistering or incorporating an NPO is done when a greater level of formality is desired, which has special legal and practical benefits.” Some groups may avoid incorporation to minimize the costs related to maintaining legal personality, but in the same time cannot enjoy key rights and protections e.g. limited personal liability for the executive board and staff.

Tax beneficial status, known as charitable status²¹ in common law countries and public benefit status in civil law countries, is a form of indirect material benefit granted to organisations whose core purpose and activities are serving the public interests as defined by the state. To acknowledge their contribution to the public good, the state provides a range of tax benefits or exemptions (Bullain and Toftisova 2005). In most democracies, the tax beneficial status brings both tax beneficial treatment for the organisation itself and tax beneficial treatment for donors (corporations, individuals etc.). Tax benefits is a “forgone revenue” or “revenue that will not be collected” from non-profit organisations (Bullain and Toftisova 2005, 17). Tax benefits are fiscal exemptions and credits granted to the organisation, sometimes directly through registration as a legal entity and sometimes through a separate procedure for accessing tax beneficial status (Salamon and Flaherty 1996). Registration is a way to verify the eligibility to generous state benefits which are increasingly available for non-profits (Salamon and Flaherty 1996, 10). Applying to the tax authorities or a specific body (state agency) are the two main ways to obtain tax beneficial status (Simon et al. 2016, 1151). Organisations which are engaged in both advocacy and service delivery as their core missions, depending on the public benefit legislation may qualify for tax beneficial status (Bullain and Toftisova 2005).

In addition to eligibility criteria for tax beneficial status, the laws set procedures “for monitoring the continued appropriateness of such status for particular organisations” in the form of financial and non-financial reporting requirements (Salamon and Flaherty 1996, 19). According to Salamon and Flaherty (1996, 26) “[...] the purpose of such requirements is to provide a means of confirming, through periodic reporting and disclosure, that a non-profit organisation is in fact conducting activities consistent with its purposes and beneficial tax status and devoting its financial resources to the fulfilment of those purposes.” These rules are set in fiscal or charity regulation. In general, organisations with tax beneficial status (charity or public benefit organisations) are subject to stricter reporting regime – higher level of transparency and accountability demands - than other non-profit organisations (Bullain and Toftisova 2005, Simon et al. 2016, 1153). In

²¹ It is important to note that charity is not a legal form in itself, but a quality given to non-profit organisations due to their public benefit purpose (van der Ploeg 2009, 10).

the words of Phillips and Smith (2014, 1148): “State regulation for the third sector has focussed primarily on ‘charities’ (under various labels), while the broader set of non-profit organisations that are also exempt from income taxes but cannot issue tax receipts are only lightly regulated, if at all.” To secure compliance with these reporting requirements, the laws may establish supervisory bodies responsible for enforcement of investigations, penalties and ultimately removal of tax beneficial status in case of non-compliance (Cordery and Deguchi 2018). In some jurisdictions the tax authorities have an oversight and enforcement function (for example in the US and Canada; Phillips and Smith 1148; Breen 2013). The establishment of autonomous regulators - independent agencies, government or non-ministerial departments - to oversee the work of charities and safeguard the public benefit are particularly characteristic for common law countries (Cordery and Deguchi 2018, 1339, see also Phillips and Smith 2014). Moreover, in common law countries, charity law is characterised with constraints on political activities (Lang 2012, 103) i.e. “governments define ‘charity’ restrictively, limiting charities’ ability to advocate against public policy or to take other political action” (Cordery and Deguchi 2018, 1334).

Organisations that maintain legal personality and tax beneficial status are subject to certain reporting and accountability requirements. *Regulatory (i.e. legal) constraints* are hence defined as the set of requirements, costs and obligations stipulated in non-profit law that the organisation must comply with in order to maintain the receipt of *indirect state benefits*. Whilst there might be constraints related to accessing state benefits, here the focus is on the conditions for maintaining benefits because the expectation is that maintenance will incentivise board professionalisation. According to Bolleyer (2018, 37): “Organisations might have to comply with reporting requirements or to refrain from certain activities while enjoying certain privileges.” Hence, refraining from activities due to the legal limitation on political activities of organisations with tax benefits (i.e. charities) falls within the understanding of regulatory constraints of this study.

Depending on the type of organisational access to indirect benefits within each legal regime we can identify up to three configurations which differ in the combinations of indirect benefits they have: 1. organisations with ‘no indirect benefits’; 2. those that are eligible for one type of indirect benefit - legal

personality or tax beneficial status - and 3. organisations with 'all indirect benefits' that have both legal personality and tax beneficial status. These configurations differ in the type and intensity of regulatory constraints (i.e. reporting requirements) they are exposed to. The character and stringency of the reporting requirements *vary across countries* and can change over time within one country. Organisations with the same configuration of indirect benefits operating in different regulatory regimes may be exposed to different intensity of regulatory constraints. Simultaneously, *within the same legal regime*, I expect regulatory constraints to increase when organisations changes configuration from 'no indirect benefits' to 'all indirect benefits'.

In the next section I will define the key aspects of internal governance this study accounts for.

2.3.3 Non-Profit Governance

Questions of internal governance are key to our understanding of the value of non-profit membership organisations for members and societies (Tschirhart 2006, 534). Drawing on a definition of governance offered by Steen-Johnsen et al. (2011), I define non-profit governance broadly as the way in which groups organise themselves internally to formulate and accomplish their goals. The governing model is shaped by two dimensions: formal voting rights and their use, i.e. do members control and elect the leadership? And board professionalisation, i.e. are member or external professionals represented on the board? I focus on formal voting rights and their use in practice on the one hand, and board composition (professionalisation) on the other, as two characteristics of governing structures of non-profit membership organisations that I expect to be affected by non-profit regulation related to legal forms and maintaining indirect benefits. These two aspects are particularly important for the development of democratic skills of citizens through participation in internal decision making at AGMs or board meetings (Warren 2001) and they shape the representational capacity of non-profit organisations (Guo and Musso 2007; Guo and Zhang 2011). This means that the focus is on the role of members and the executive board within the organisation. In the context of the third sector literature this is a novel approach since the theory of internal governance has focused largely on

the relationship between the executive board and professional staff (Cornforth 2003, 12; Cornforth and Macmillan 2016).

Non-profit research on internal governance has largely focused on the functioning of boards, mainly due to the board's legal and fiduciary responsibility to govern the organisation (Cornforth 2011, 1117; Ostrower and Stone 2007, 428; Andersson 2012). Stone and Ostrower (2007, 418) argue that by focusing solely on the board, researchers fail to grasp the role of other organisational actors, including staff, volunteers and beneficiaries in shaping organisational performance, mission and policies. Similarly, Cornforth (2011, 1117, 1122) suggests that we should not equate the work of the board with non-profit governance and such approach is ignoring the wider (regulatory) governance pressures on the one hand, and on the other it ignores internal actors who play a role in organisational governance. According to him:

“[a] broader conceptualization of non-profit governance opens up new questions for research concerning the relationships between different parts of the governance system, such as how regulation, audit, inspection, and funding regimes can influence governance structures and practices at the organisational level, or what contribution other internal actors such as managers, staff, and members make to carrying out governance functions” (Cornforth 2011, 1122).

One of the core questions regarding non-profit membership organisations' governance is 'how much power to give to members' (Tscherhart 2006, 533). The literature on governance has noted the existence of different governing models depending on the members role in non-profit organisations i.e. their ability to control the executive and elect the members of the executive. We can distinguish between governing models which are characterised with absence of members' powers to control and elect the executive, and governing models characterised by members' voting rights and power to control the executive. The centralised model of governance has been empirically observed in large-scale political organisations (Michels 1962; Jordan and Maloney 1997). Skocpol (1999) and Putnam (2000) have noted the rise of professional groups where supporters have little engagement beyond paying fees. Jordan and Maloney (1997) have coined the term “protest business” for interest groups which are staff-led, professionalised and hierarchical, aim to maximise their efficiency and are maintained through ‘check-book membership’ (Maloney 2015, 102; see also

Bosso 2005). In this model there is little space if any for membership involvement in decision making, meaning that members are not enfranchised, and professional staff and key activists create the programmatic priorities (Halpin 2014, 68). In contrast to this model stands the ideal typical membership association where members have opportunities for face-to-face meetings and can democratically elect and control the organisational leadership (Billis 2010; Halpin 2014, 60).

Scholars have raised concerns that the centralised and professionalised model of interests' groups is dominating the organisational landscape. However, this model cannot be generalised to the whole population, something that Clarence, Jordan and Maloney (2005, 135) in a jointly co-authored study rightfully point out: "the protest business model was based on a few better-known large scale beasts, but has been extrapolated as a generalisation for the whole campaigning sector in a way not originally intended or specified"(see also Jordan and Maloney 2007, 146). In reality, governing models of groups are diverse and changing during the course of an organisation's life (van Puyvelde et al. 2016, 897; Halpin 2014). In their study on campaigning groups in the UK, Clarence et al. (2005) find a 'mixed reality' of intra-organisational participation, with both bigger and smaller groups offering wide venues for members involvement. And exactly this variation of members' role, particularly their power to exercise control and elect the executive board, is considered a central aspect of governance in this study.

Another central aspect of non-profit governance of concern to this study is related to the composition of the board. The literature on non-profit boards formulates several models of board governance, out of which two make explicit assumptions on who the members of the board should be. The democratic perspective assigns a representational role to the board meaning that the board is elected from within the membership and its role is to represent the interests of the groups that the organisation serves (Cornforth 2003, 9). This perspective is consistent with the ideal typical membership organisation mentioned above. In contrast, the stewardship model assumes that the role of the board is to support the work of staff with its expertise and experience (Cornforth 2003, 13). Therefore, the members of the board should have the professional skills to meet their role of

organisational stewards. Appointment of members of the board through targeted recruitment will result in a board of professionals with needed skills and links to key stakeholders – who can act as organisational stewards and support the work of the executive office (Cornforth 2003). In essence, the democratic and the stewardship models clash over who the members of the board should be – professionals with expertise and skills or ‘lay persons’ representative of the constituency (Cornforth 2003, 13).

In the following section I will define the concepts of formal voting rights and rule-based participation, board professionalisation and consultative participation, being central aspects of interest. The study explores how formal voting rights and board professionalisation are shaped by the constitutive and regulatory function of non-profit law. The variation in consultative participation, the last aspect of interest, is explored across organisations with different governing models.

2.3.3.1. Formal Voting Rights

Formal voting rights in this study include the rights of ordinary members to attend the annual general meeting (AGM) and participate in decision-making through voting (Salamon and Flaherty 1996). The AGM is a forum where members are presented with the organisational accounts and can directly question the work of the leadership; therefore it plays an important accountability function (Cordery 2005, 2). The formal voting rights may encompass voting for candidates for the executive board, vote for formal proposals for amendment of organisational rules, other proposals concerning organisational policy and programmatic priorities. The specific voting rights granted to organisational members in *non-profit law* may vary across legal regimes and for different legal forms within a legal regime. In this study the focus is on the *right to attend the AGM and the right to elect the members of the executive board* because these are two rights that are commonly stipulated in legal regulation across developed democracies. Moreover, even though there are other membership rights guaranteed through legal regulation (see Bramble 2000, 304), the rights of members to elect the leadership is the minimal guarantee that organisations are representative of their members and members have right to ‘voice’ discontent by voting down members of the board.

Holding of “free and open elections”, according to Cnaan (1991, 617), is “the hallmark of all democratic societies and organisations.” Without this the decision-making power will be concentrated in the self-appointed leadership (Cnaan 1991, 617). In sum, the voting rights I focus on are particularly important because they enable members to exercise control on the work of the executive and elect the organisational leadership (Guo and Musso 2007, 314).

2.3.3.2. Rule-Based Participation

Members can use or not use formal voting rights stipulated in organisational rules (i.e. statutes, articles of association, constitution). In this thesis, rule-based participation is defined as the use of formal voting rights enshrined in organisational statutes. This means that stipulation of formal voting rights in the organisational statutes is a precondition for the existence of rule-based participation. Organisations may specify different formal voting rights in organisational statutes i.e. expand the rights beyond what legal regulation demands. And even in countries where legal regulation does not demand guarantees of key formal voting rights in organisational statutes, organisations may adopt such rights. The definition of rule-based participation captures whether there are actual opportunities for participation in organisations with formal voting rights enshrined in organisational rules and the extent to which they are used by members (for similar approach see Clarence et al. 2005, 142). Based on empirical research, we know that organisations that guarantee formal voting rights for members, in practice may operate with “dormant” members who are not actively encouraged by the leadership to participate (Lansley 1996; Locke et al 2003) or simply refuse to use the opportunities for participation (Clarence et al. 2005; Cnaan 1991). Bramble (2000) found that despite the presence of formal rights to elect the leadership in some unions, members controlled the leaders only to a limited extent. Exactly this discrepancy between potential and actual participation has been emphasized in non-profit research (Cnaan 1991; Leardini et al. 2016). Therefore, in this thesis I want to assess rule-based participation in organisations i.e. the usage of formal voting rights, as defined in organisational statutes, in practice.

2.3.3.3. Board Professionalisation

The second dimension of the governing models that this thesis expects to be affected by non-profit law is the composition of the board. Here I specifically focus on board professionalisation, which is defined as the external recruitment of professionals²² with competencies (skills, experiences and knowledge) relevant for organisational maintenance, including administrative and policy skills, to occupy *unpaid positions*. Before describing the characteristics of professionalised boards, firstly we need to recognize that professionalisation has been mainly defined through hiring of professionals for *paid positions* within organisations. Traditionally, there has been a distinction in the organisational literature between paid staff and volunteers (Hwang and Powell 2009) and professionalisation has been associated with paid staff (Kriesi 1996, 154). For example, Lang (2012, 75-56) conceptualizes professionalisation as the number of employees who do administrative and management work. In the same vein, Klüver and Saurugger (2013, 187) suggest that organisations professionalise through hiring part-time or full-time staff specialized in carrying-out managerial and administrative tasks.²³ Despite the dominant distinction between paid staff and volunteers (Hwang and Powell 2009), third sector researchers have noticed that organisations can also professionalise through recruitment of professionals for unpaid positions in the executive body in response to increased environmental pressures. Hwang and Powell (2009, 274) themselves suggest that there is a “spread of expertise” coming from “volunteer executive directors and board chairs who are employed in professional activities in the for-profit or government sectors and “loan” their skills to non-profits.” Managerial professionals are particularly recruited to fill in leadership and *board positions* (Suarez 2010b; Abzug and Galaskiewicz 2001). Therefore, to explore the potential consequences from regulatory constraints related to maintaining indirect benefits, I focus on board professionalisation.

²² Individuals who belong to the category of professionals “derive legitimacy and authority from their formal education and claims to specialized expertise” (Hwang and Powell 2009, 268).

²³ Klüver and Saurugger (2013, 187) specifically define professionalisation as the “increasing hiring of professionals (or specialists) whose competencies have been certified by a specific profession (such as lawyers or economists).”

What does board professionalisation look like? Organisations increasingly recruit 'organisational professionals' (DiMaggio and Powell 1983) and select professionals for unpaid executive positions that have managerial, administrative, legal and accounting skills (Abzug and Galaskiewicz 2001; Groninger 2011; Harrow and Palmer 2003). Smith (2011, 214) argues that boards are professionalising by recruiting professionals such as "lawyers, accountants and high-tech entrepreneurs" and marginalising members without such competencies. Similarly, Guo (2007, 462) claims that non-profit organisations "overtly reflect the culture of professionalism in its board composition i.e., include fewer community representatives and more professional, corporate, and social elites to gain legitimacy in the eyes of government agencies and win contracts from them". The executive board can professionalise by recruiting professionals within or outside of the organisation²⁴ who poses competencies that are perceived as useful for organisational maintenance such as legal, managerial, accounting, financial, PR, charity and non-profit experience. In massive organisations, internal recruitment of professionals (for unpaid leadership positions) may undermine descriptive representation of the board because members taking status functions share similar traits with the elite or are assimilated by the elite over time (Michels 1962). Descriptive representation concerns the extent to which the organisational leadership mirrors the 'political' characteristics of its constituency (Pitkin 1967; Guo and Musso 2007, 314). In the words of Guo and Zhang (2011, 329): "Descriptive representation occurs when leaders of an organisation are in some respects typical of the organisational constituents." In smaller membership organisations, internal recruitment of members with particular skills is less likely to undermine descriptive representation because of the proximity of the board and the members. Therefore, board professionalisation here is defined as the *external recruitment* of professionals and experts with competence (skills, experiences and knowledge) relevant for organisational maintenance. Even though members of the board in some organisations are eligible for reimbursement or small honorarium for traveling and meetings, in principle the roles in the executive

²⁴ This is similar to the recruitment of professional staff for paid positions. Political parties often recruit employees from within the membership. Among non-profits recruitment of professional staff is mainly done outside of the organisations. The same recruitment paths – internal and external - exist when it comes to unpaid positions in the executive board.

organ are voluntary and unpaid. For smaller membership organisations to have their board professionalised, the element of external recruitment of professionals with skills for organisational maintenance for unpaid positions should be present.

Executive boards of non-profits that are professionalised through external recruitment of board members are characterised by *low descriptive representation* (Guo 2007; Guo and Musso 2007). Bramble (2000, 303) in his study on unions representation distinguishes between 'organic' and 'outsider' leaders, organic being those leaders who have similar experiences, social and educational background as members that elect them, while outsider leaders do not arise from the members and lack similarity thereof. There are suggestions that a lack of descriptive representation i.e. 'organic leaders' which share similar experiences, social and educational background as the members, undermines the efficiency of external representation of interests (Bramble 2000; Guo 2018). Having professionalised boards risks that the visions of members and leadership over the organisational direction diverge significantly, and that externally recruited leaders, rather than members have the final say in shaping organisational priorities. In this way, professionalisation of non-profit boards allegedly shifts the logic of operation from expressive value-oriented mission to an instrumental logic of operation focused largely on organisational performance and survival (Frumkin 2002; Stewart 2014, 9-10).

Professional management and leadership

Before moving to the third dimension of interest, I want to briefly focus on the concept of professional management. By professional management I refer to the "the top salaried position[s] in non-profit organisations, variously labelled executive director, CEO, chief professional officer (CPO), or president" (Norris-Tirrell et al. 2017, 147). The professional management, when present in an organisation, acts as an organisational entrepreneur that can shape the organisational direction (Moe 1980; Halpin 2014, 105). Therefore, professional managers act as agents of change within organisations, and this concept is useful for accounting for organisational change and particularly in the context of this study accounting for the process through which non-profit law shapes aspects of non-profit governance. This conceptualisation is in line with the literature that suggests that the rise of the managerial professionals, a subsection of the

occupational group of professionals who share “administrative or management training and similar occupational norms” had profound effect on organisational management (Hwang and Powell 2009, 269-270). More specifically, studies found that rationalisation of the organisational structure takes place after hiring a paid executive director (Stone 1996; Wood 1992) and that staff-driven organisations demonstrate “higher level of rationalization in program planning, financial management and performance evaluation” (Lu 2015, 301). According to Maloney (2015, 102) members of professional staff in organisations have been:

“educated to degree level, have accredited professional/vocational qualifications in a diverse range of areas - for example, economics, finance, management, administration, public relations communication, human resources, marketing, recruitment, fundraising, law and relevant areas of the physical and natural sciences - and have previous employment experience with other interest groups or non-governmental organisations (NGOs), government institutions (regional and national) and corporate actors.”

Importantly, in this study organisational leadership in addition to *salaried managerial positions* encompasses also leading *unpaid positions* in the executive board such as chairman or president of the board. This is in line with the literature which suggests that board members and particularly executive managers are often catalyst for organisational change (Baluch 2012). Also, empirical evidence collected for this study shows that members of the executive boards assume leadership roles and act as agents of change. Hence, throughout the text, professional managers and members of the board who assume leading roles are referred to as the *leadership* because they have a status function in the organisation and hold executive positions.

In summary, according to the definition of board professionalisation adopted in this thesis, a board is professionalised when many of the board posts are filled in with professionals outside of the organisation. Bringing outside recruits on the board means that members of the organisations do not have a chance or have fewer opportunities to occupy leading positions within the organisation. Having many people with expertise on the board may enhance the organisational efficiency, but also divert the focus from members needs or advancement of core mission towards organisational maintenance i.e. improvement of financial standing and administration. Boards where many of the positions are filled in with members recruited within the organisation, regardless of their professional

profile, are not considered to be professionalised boards. The assumption is that members will emphasize the substantive over instrumental interests.

2.3.3.4. Consultative Participation

There are variety of ways to facilitate members' participation beyond rule-based participation which is based on formal voting rights as stipulated in the governing document. For example, organisations may consult members over programmatic priorities through surveys, focus groups, advisory groups etc. (Greer et al. 2003; Warleigh 2001; Maloney 2015; Saidel 1998). In this study, consultative participation is defined as the opportunities for members input on organisational matters and programmatic priorities that are non-binding for the leadership. This form of participation does not entail final authoritative decision making via voting and, as already stated, goes beyond formal voting rights. Opportunities for consultative participation can be *direct* i.e. members directly provide feedback on online forums, via surveys, at organisational events, and *indirect*²⁵ i.e. the input is mediated through middlemen who transmit information from the members to the leadership and vice-versa (Moe 1980, 45). The organisational offer of opportunities for consultative participation is equally important as studying individual-level participation and its determinants, because prompting members to participate in consultative fora may translate into greater participation. Exploring consultative participation is important especially in the context of the new technologies which provide organisations with cost-effective tools to receive members' input. This form of members' participation is consistent with Guo and Musso's (2007) additional dimension of organisations' representational capacities – *participatory representation*. In their words, participatory representation “highlights the importance of maintaining a variety of channels of communication and participation between an organisation and its constituents to ensure that the organisation is receptive to its constituents” (Guo and Musso 2007, 315).

²⁵ Direct opportunities for consultative participation may be provided via surveys, emails, online forums, face-to-face meetings during events, and indirect opportunities for consultative participation may be provided through communication with regional representatives.

In the previous sections I have presented the broader theoretical perspective, the definitions this thesis is based on, and now I will elaborate on the specific theoretical expectations that guided the empirical research.

2.4. Theoretical Expectations

The main contrast I am exploring in this thesis is related to the type of legal forms available across legal regimes and the complexity and intensity of regulation related to maintaining indirect benefits across configurations within each legal regime. The thesis is based on two fundamental observations. First, legal regimes differ in the types of legal forms available for membership organisations, with some specifically regulating formal powers for members and others not. Second, regardless of the non-profit tradition (common law or civil law) and the type of regulatory regime (constraining or permissive), within a regulatory regime we can distinguish between up to three configurations which differ in the combinations of indirect benefits they have and consequently they differ in the type and intensity of regulatory constraints (i.e. reporting requirements) they are exposed to. On the basis of these observations in the following sections I develop expectations on the way non-profit law shapes non-profit governance of non-profit membership organisations.

2.4.1. The Impact of Legal Forms on Formal Voting Rights

Legal regimes differ in the types of legal forms available for membership organisations, with some specifically regulating formal powers for members and others not. The main expectation here is that the state affects the formal voting rights of organisations through the available legal forms. Lansley (1996, 223) suggests that non-profit law shapes formal voting rights through legal requirements and the extent to which members are involved in decision-making. He suggests that (1996, 224) “legal or similar requirements may place the organisation in a constitutional strait-jacket which predetermines the amount of membership involvement which is possible.” Organisations that operate in regimes where there is requirement for organisations to grant formal voting rights for members will comply in order to access the legal form available for members. In countries where there is no such requirement, organisations will have a choice to operate with or without formal voting rights. In that sense, the law by not

regulating internal governance leaves it to the organisational entrepreneurs to decide whether to enfranchise members or not. Professional managers led by professional motives for efficiency and economic considerations will be “free” from constraints to adopt a centralized decision-making structure. Studies have suggested that organisational leaders who poses managerial and administrative competencies, try to enhance the chances of organisational survival by altering the organisational structure of the organisation (Maloney 2015, 99). Jordan and Maloney (2007, 161) argue that: “Servicing a membership can be a drain on organisational resources – members are more expensive than supporters or donors”. Organisations with voting members may face difficulties since elections are costly, maintaining informed membership is time-consuming, organisations may face difficulties in achieving quorum for meetings etc. Therefore, even though membership groups may *initially* adopt a governing structure which grants members the right to elect the leadership, in countries where the law does not explicitly require members to have voting rights, the leadership, in order to enhance organisational efficiency is incentivized to initiate revision of the formal organisational structure to limit or all together terminate such rights.

The first expectation of this study is:

Formal rights expectation: *Non-profit membership organisations operating in legal regimes providing legal forms which require formal voting rights for members will guarantee such rights in their governing documents. Organisations operating in legal regimes providing legal forms which do not require formal voting rights for members will either not have them or limit their use in practice.*

Some authors suggest that organisations may mimic compliance (Edelman and Suchman 1997, 496), and that there is discrepancy between the formal rights and their use in practice (Lansley 1996; Locke et al. 2003). However, here we expect organisations operating in countries where legal forms for membership organisations require formal rights for members to offer actual opportunities for participation. This is in line with the understanding of law as a constitutive environment which determines the types of organisations that come in existence and their organisational structures (Edelman and Suchman 1997, 479). Hence, the second expectation of this study is:

Rule-based participation expectation: Organisations with formal voting rights stipulated in their governing document will provide opportunities for use of these rights in practice i.e. will have some level of rule-based participation.

In the next section we turn to the theoretical expectation about the influence of regulatory constraints related to indirect benefits on board professionalisation.

2.4.2. The Impact of Indirect Benefits on Board Professionalisation

Non-profit membership organisations which enjoy indirect state benefits face regulatory constraints which yield certain adjustment costs for the organisation. The main observation is that, regardless of the non-profit tradition (common law or civil law) and the type of regulatory regime (constraining or permissive²⁶), within a regulatory regime we can distinguish between up to three configurations which differ in the combinations of indirect benefits they have and consequently they differ in the type and intensity of regulatory constraints. Starting with the 'all indirect benefits' configuration, non-profit organisations which have both legal personality and tax beneficial status will be exposed to highest regulatory constraints. Non-profit membership organisations that have beneficial tax status but do not have legal personality will operate under lower regulatory constraints compared to the previous configuration. Compared to only having legal personality, maintaining tax beneficial status normally requires the organisation to comply with stricter requirements. Therefore, a non-profit organisation that only has legal personality will operate under a lower level of regulatory constraints and normally have obligations towards one public authority (which maintains the register of legal persons). Finally, an organisation that operates without any indirect benefits will be exposed to few reporting obligations or none. This analytical distinction is in line with the law understood as regulatory environment (Edelman and Suchman 1997), that maintains organisational control through the allocation of benefits and constraints (James 2000, 327).

Maintaining indirect benefits involves becoming subject to certain reporting and accountability requirements (Salamon and Flaherty 1996, 11; Cordery et al.

²⁶ Earlier we distinguished between relatively constraining and permissive non-profit regulatory regimes, depending on the stringency of the regulation in terms of accountability and reporting requirements and enforcement structures related to maintaining indirect state benefits.

2016). Such reporting may span from simple obligations, such as reporting changes to the registration details, to more comprehensive reporting, such as submission and disclosure of annual financial and narrative accounts. The latter obligations require specialist knowledge or skills, for example legal or accounting skills. Given the importance of indirect benefits for organisational maintenance and survival, the organisations will comply with reporting requirements stipulated in law. Depending on the size of the organisation (in terms of budget) and the complexity of accountability and reporting requirements it is exposed to, the organisation may require professional competencies to assure compliance (Breen 2013, 854).

Edwards and Cornforth find that boards play a strong compliance role in response to legal responsibilities:

“The state has an important coercive and normative influence on governance through its policies, legislation and guidance. Legal responsibilities emphasize non-profit boards’ compliance role – checking propriety and legality, safeguarding assets and organisational mission, and accounting for expenditure.” (Edwards and Cornforth 2003, 94).

Coercive pressures imposed through regulations affect the functions and priorities of the board and consequently the type of people they recruit (Edwards and Cornforth 2003, 80). This is also compatible with resource dependence theory, according to which the board members are selected for their technical knowledge including legal competencies in acquiring and maintaining key organisational benefits (van Puyvelde et al. 2016, 904-905; Cornforth 2003, 8-9). Both Smith (2011, 214) and Guo (2018) have argued that boards are professionalising to be able to maintain their state benefits. Here the focus is on indirect benefits, because receipt of state funding is more likely to result in professionalisation through hiring staff, as it is often stipulated in grants and contracts, and not in board professionalisation.

This thesis draws on Cornforth (2003) who argues that boards may professionalise in order to meet their legal responsibilities and it suggests that if an organisation is exposed to demanding and complex regulatory constraints it is more likely to professionalise by recruiting external experts to sit on its governing board. The boards of organisations operating under higher regulatory constraints will have higher responsibilities “which have legal ramifications” and

“call on board members to develop or hone understanding in many areas, from financial management to organisational communication, from fundraising to strategic planning” (Renz and Smith 2010, 15).

In line with the fiduciary and legal duties, the board is ultimately responsible for the financial and administrative management of the organisation. By gaining control over organisational information, professional management may shape the functions of the board (Cornforth 2003, 16) and use them as tools for manoeuvring the changing legal and financial environment (Baluch 2012, 18). In fact, the professional management of organisations that are exposed to high regulatory constraints related to indirect benefits, may itself facilitate board professionalisation by providing descriptions and specifications of skills needed for board members and actively participating in the recruitment of professionals in the board (i.e. interviewing candidates) (Locke et al. 2003, 7). Burt and Scholarios (2011, 108) suggest that “[e]xternal imperatives for professional recognition have also influenced the volunteer profile, reinforced by the preference among professionals to deal with fellow professionals.” In organisations with formal voting rights, where members elect the board, there can be also a system of so called “guided democracy” where the elected members of the board are those preferred by the existing trustees or executive managers (Locke et al. 2003, 66). The organisational entrepreneur (a chief executive, chairman or someone else within the leadership) facilitates professionalisation of the board in response to increased regulatory pressures related to indirect benefits. In sum, the leadership may co-opt the nominating procedures, so the profiles of the candidates match their preferences. This is more likely to happen in organisations which are exposed to high regulatory constraints i.e. maintain legal personality and tax beneficial status.

The third expectation of this study is as follows:

Board professionalisation expectation: *Non-profit membership organisations maintaining indirect benefits which are exposed to high reporting requirements and external supervision will undergo board professionalisation, whilst organisations which are exposed to lenient reporting requirements and little or no external supervision will not.*

In sum, the core argument is that reporting and accountability requirements imposed through regulation will incentivise professionalisation of the board through the external recruitment of professionals that have managerial, administrative, communication, legal and accounting skills to serve in voluntary (unpaid) executive positions.

In the next section I will present the last theoretical expectation of this study related to the variation of consultative participation across governing models.

2.4.3. Consultative Participation across Governing Models

This study acknowledges that members can increase their representational capacity through other channels for participation which are consultative in nature, and not binding for the leadership. The variation in consultative participation, the last aspect of interest, is explored across organisation falling under different governing models. This thesis argues that regulation shapes two aspects of governance – formal voting rights and their usage and board professionalisation. I differentiate between organisations with membership centred governing models characterised by rule-based participation and non-professionalised boards and leadership centred models characterised by absence of rule-based participation and the presence of professionalised executive boards.²⁷ The argument is that non-profit regulation, depending on the legal forms available in the legal regime and the configuration of indirect benefits the organisation maintains will encourage one model of governance over the other.

Members join non-profit membership organisations, being advocacy or service oriented, in return for material, solidary, purposive incentives (Clark and Wilson 1961) as well as valuable information (Puyvelde et al. 2016, 899). Since membership is an important “source of legitimacy, finance, and voluntary help” (Lansley 1996, 226), organisations are interested in maintaining their membership base - sustaining their members’ loyalty and preventing their exit (Olson 1965; Hirschman 1970; Moe 1980). Therefore, provision of opportunities for members’ participation beyond the AGM is important for the leadership to

²⁷ Membership centred models will have formal representation and will experience high descriptive representation whilst leadership centred models on the other are characterised by absence of formal representation and low descriptive representation.

understand members' needs and interests. Here I argue that, while all organisations will maintain some way of communication with members, the extent to which organisations will offer opportunities for consultative participation will be shaped by the extent to which members are already involved through rule-based participation and the extent to which they occupy board positions. Organisation-level opportunities for participation are shaped by the perception of the leadership (organisational entrepreneurs) on the extent to which membership input is necessary to be able to maintain the organisation (i.e. retain and increase membership and membership fees; signal legitimacy to policy makers; adapt services to members' needs, etc.). Hence in leadership centred organisations, the leadership will enhance opportunities for consultative participation to be able to maintain the connection with organisational membership and prevent fluctuations, and to legitimize organisational decisions and policy stances. Organisations with membership centred models already maintain the connection with members through rule-based participation and members' direct presence in the executive board, thus the leadership would not be incentivised to invest additional resources in enhancing membership participation. The forth expectation is as follows.

Consultation expectation: *Organisations that have leadership centred governing model will provide many opportunities for consultative participation. Organisations with membership centred governing models will provide fewer opportunities for consultative participation.*

2.5. Conclusion

The chapter presented the conceptual and theoretical framework and the specific theoretical expectations that guided the study. I have developed four expectations which are addressed in four empirical chapters. Theoretically, the study relies on institutional theory of organisational isomorphism (DiMaggio and Powell 1983) and resource dependence theory (Pfeffer and Salancik 1978). Organisational response to the legal environment, understood as constitutive and regulatory (Edelman and Suchman 1997, 479), is a result of both coercive pressures and inducements. And organisational entrepreneurs (Moe 1980) mediate the influence of law on organisational structure by introducing their

interpretations of the environment and, when circumstances allow, initiating change in accordance with their perceptions (Halpin 2014, 105).

The study explores the ways in which non-profit law may affect non-profit governance of non-profit membership organisations which are defined as self-governing, organised, private, voluntary organisations with membership, and pursue aims that will benefit their members, the broader public, or both. Non-profit law encompasses the legal rules for constituting legal forms for non-profit membership organisations and the regulatory constraints related to maintaining indirect state benefits. Legal forms are defined as the types of organisational structures an organisation can adopt from a legal perspective. Indirect state benefits are the main way in which non-profit membership organisations become entangled with the state and encompass legal personality and tax beneficial status. Legal personality means that the organisation is an incorporated body in law and its members have limited liability, and tax beneficial status entails provision of tax credits and exemptions for organisations whose purposes are in line with the public interest. Non-profit governance is defined as the way in which organisations organise internally in terms of members enfranchisement and executive board composition.

The thesis proposes that by shaping these two key aspects of governance – formal voting rights and board professionalisation – non-profit law shapes the governing model of the organisation (see Figure 1). Formal voting rights are defined as the rights of ordinary members to attend the annual general meeting and elect their representatives, and rule-based participation is defined as the use of these formal voting rights in practice. Board professionalisation, meaning the recruitment of skilled volunteers with competencies (skills, experiences and knowledge) relevant for organisational maintenance outside of the organisational membership to fill in unpaid positions on the executive organ.

The organisations' governing model range from membership centred, where members engage in rule-based participation and are represented on the boards, to leadership centred model where members do not engage in rule-based participation and have boards dominated by external professionals. Non-profit regulation, depending on the legal forms available in the legal regime and the configuration of indirect benefits the organisations maintain, will encourage one

model of governance over the other. Translated into the language of institutional isomorphism (DiMaggio and Powell 1983), organisations operating in the same legal forms and exposed to the same regulatory constraints related to maintaining indirect benefits will tend to have high degree of organisational similarity.

The first argument is that legal regimes differ in the types of legal forms available for membership organisations, with some specifically regulating formal powers of members and others not. Hence, the first main theoretical expectation of the thesis is that the regulatory requirements related to the legal forms available for membership organisations have consequences for the adoption of formal voting rights and rule-based participation (*Formal rights expectation and Rule-based participation expectation*). Specifically, the expectations are that organisations operating in legal regimes where there are specific legal forms for membership organisations which require adoption of formal voting rights for members, will guarantee such rights in their governing documents. And organisations operating in legal regimes which do not regulate (require) formal voting rights for members will not guarantee such rights in the governing document and will tend to limit them to the members of the executive board. The organisations that adopt formal voting rights are expected to provide opportunities for their use and experience some level of rule-based participation.

The second argument is that, regardless of the non-profit tradition (common law or civil law) and the type of regulatory regime (constraining or permissive), within a regulatory regime we can distinguish between up to three configurations which differ in the combinations of indirect benefits they have and consequently they differ in the type and intensity of regulatory constraints (i.e. reporting requirements) they are exposed to. Based on this, the second main theoretical expectation labelled as the *Board professionalisation expectation* is that regulatory requirements related to *maintaining* indirect benefits have consequences for board professionalisation. Specifically, the expectation is that non-profit organisations maintaining indirect benefits which are exposed to high reporting requirements and external supervision will undergo board professionalisation, whilst organisations which are exposed to lenient reporting requirements and little or no external supervision will not. Moreover, the expectation is that the organisational entrepreneur (a chief executive, chairman

or someone else within the leadership) facilitates professionalisation of the board in response to increased regulatory pressures related to indirect benefits.

The final argument of the thesis is that opportunities for consultative participation will vary across different governing models. The main theoretical expectation labelled as *Consultation expectation* is that organisations with leadership centred governing model, to compensate for the low representational capacity, will offer many opportunities for consultative participation, whilst organisations with membership centred governing model that enjoy high representational capacity will offer only few opportunities for consultative participation.

There are range of other factors that may affect the governing model that organisations adopt. The aim of the research design, and particularly the case selection is to account for these factors. In the next section I will present the methodology of the study.

3. Methodology

3.1. Introduction

In this chapter, I firstly present the overall methodological approach and the research design implemented in light of the research question. Secondly, I present the data used in the analysis with a particular focus on gathering the documentation and conducting the semi-structured interviews used in the organisational analysis. Thirdly, I present the stages of data analysis, the operationalised concepts and the alternative factors accounted for in the analysis.

The study at hand is a comparative multiple case study design which analytically synthesizes a legal analysis of available legal forms and regulatory constraints related with indirect state benefits, and an organisational level analysis of non-profit governance in *smaller non-profit membership organisations* (see justification below). Comparative case study research is a suitable strategy to understand the relationship between non-profit regulation and internal governance because it allows a close understanding of organisational behaviour and context to be built through within-case analysis and across-case comparison. Comparative case study research further allows the comparison of organisations with each other in a systematic way (Rowley 2002, 17) and helps us understand change in organisational forms over time (Halpin and Nownes 2011, 52).

Even though exploratory in nature, the study was initially led by pre-defined research questions and formulated theoretical expectations which were used as 'heuristic tools' guiding the data collection (Rowley 2002). In the beginning, I was looking for a 'sign of a relationship' between exposure to regulatory constraints related to indirect benefits and change in three aspects of internal governance: formal representation, professionalisation and membership involvement. After the first round of analysis of regulation and organisational data, the concepts were redefined and the expectations about their relationships were somewhat revised. These refined concepts and expectations, as presented in the previous chapter, guided the additional data collection efforts and the empirical analysis. This means that like most social science research, the study involved both deductive and inductive reasoning at different stages of the research processes (Trochim 2006). That said, this research rests on the assumption that there are at least

some regular and systematic empirical relationships, i.e. “regular with exceptions,” and that through small-n research we can capture and understand these relationships (Rohlfing 2012, 1).

3.2. Case Selection

The study case selection was guided by the initial theoretical expectations (Slater and Ziblatt 2013, 13). Gerring and Cojocaru (2016, 408) suggest that when case selection occurs at several levels, then “each level constitutes a distinct case selection event and deserves to be treated as such.” In this study, on the first level there is a selection of *countries that represent different legal regimes* (i.e. non-profit legal traditions) in terms of the legal forms available and the intensity and complexity of regulatory constraints related to maintaining indirect benefits. On the second level there was a selection of *non-profit membership organisations* that are exposed to different *regulatory constraints* related to the receipt of indirect benefits and operate in two most different *policy fields*. This means that the cases were selected with the goal to maximise variation on the cause of interest (not the outcome). Moreover, the characteristics of the cases allowed for some control over alternative explanations.

In the first step, to explore the impact that available legal forms have on formal voting rights and rule-based participation, as one way in which non-profit regulation affects internal governance, two countries were selected. These are the UK and the Netherlands, both of which are long-standing democracies with very developed third sectors (Anheier et al. 2014, 24). These countries differ in the legal forms available for non-profit membership organisations, the UK being a country where there are no specific legal forms available for non-profit membership organisations which require the adoption of formal voting rights, while the Netherlands is a country where there is a specific legal form available for membership non-profits which grants powers to the members. Moreover, they also represent contrasting non-profit regimes, the UK being a common law and relatively constraining regime and the Netherlands being a civil law and relatively permissive legal regime for non-profit groups. The non-profit regulatory regime in the UK has been described as complex and constraining in terms of reporting and supervision requirements with regards to external state agencies (Bolleyer

2018). The state policy and regulation for charities, as organisations with special tax treatment, is particularly developed and characterized by strong accountability demands (Dunn 2016). Contrary to that, the non-profit regulatory regime in the Netherlands has been described as liberal and permissive (Brandsen et al. 2016, 12; Gilbert 2018). There is therefore an absence of state policy regarding the non-profit sector in the Netherlands and the sector largely relies on self-regulatory mechanisms (Bies 2010; Brandsen and Pape 2015, 2275; Gilbert 2018). The analysis of the available legal forms and the reporting requirements for the maintenance of indirect benefits are presented in chapter four.

In the second step, to assess the impact of legal forms and regulatory constraints related to maintaining indirect benefits, *ten non-profit membership organisations that operate on a national level in the fields of health and the environment* were selected, six organisations in the UK and four in the Netherlands. The selection of cases was based on their value on the cause of theoretical interest 'X' (Gerring and Cojocaru 2016). This means that within each country cases that exhibit different values of exposure to regulatory constraints related to indirect benefits, ranging from high regulatory constraints to low or none, were selected. This approach is known as a diverse case method, requiring the selection of a set of cases "which capture the full range of variation along the dimension(s) of interest" (Gerring 2009, 8).

In the UK, of the six organisations selected, two were operating without legal personality (unincorporated associations), two with legal personality (companies limited by guarantee) and two organisations were operating with legal personality and tax beneficial status (charitable companies). In the Netherlands, the four organisations selected comprised of two with legal personality (formal associations) and two with legal personality and tax beneficial status (formal associations with ANBI status). In the Netherlands, the author could not identify comparable national organisations of a similar size to the other cases which operated without any indirect benefits, i.e. as informal associations, because registering legal personality is easy and only very small local clubs operate as

informal associations.²⁸ However, since the main difference in the outcome is expected between organisations with high regulatory constraints operating with all indirect benefits, as opposed to organisations with exposure to lower regulatory constraints which have only legal personality or none of the indirect benefits of interest, the necessary variation to assess the theoretical expectation is nonetheless present. The selected organisations are presented in Table 1.

The two policy sectors I focus on are commonly marked by different state funding availability with higher amounts available for health organisations than for environmental groups (see NCVO 2012; Burger et al. 2001, 44; Clifford et al. 2010; Clifford et al. 2013; Bloodgood and Tremblay-Boire 2016). This means that organisations operating in these two policy fields experience different levels of resource competition in the organisational field, which may affect the governing model of non-profit organisations (Baluch 2012). Moreover, the two policy fields are suitable for assessing the validity of expectations for different *types* of non-profit membership organisations. The membership type and core mission of organisations have been pointed out as factors that affect members' role in internal governance (Guo and Zhang 2011; Halpin 2006; Barakso and Schaffner 2007). The selected health organisations dominantly cater to the direct interests of their members (professional and patient organisations), whilst the selected environmental organisations dominantly pursue aims that benefit the broader public (for the distinction see Halpin 2014). They also differ in their core mission, health organisations being more service oriented whilst environmental organisations are more advocacy oriented.

Selected organisations are smaller membership organisations in terms of their membership size, operating on a national level with individual members as the primary membership type.²⁹ The organisations selected for the study fit the definition of non-profit membership organisations, defined as self-governing, organised, private, voluntary organisations with membership, which pursue aims that will benefit their members and/or the broader public, as based on Salamon and Anheier's (1997) structural operational definition. The organisations were

²⁸ Some informal organisations may register with the Chamber of Commerce to receive limited liability, but such a list could not be obtained.

²⁹ This does not exclude organisations that also assign business or corporate membership.

founded during the 1990s³⁰, meaning that they are younger organisations within the range of 20-30 years old. Commonly, case studies on organisational governance and adaptation have focused on “large, affluent, and heavily professionalised groups” (Fraussen and Halpin 2016, 6). This study focuses on smaller organisations in terms of membership size and financial capacities because these are the most common type of organisation in the population of non-profit membership organisations. Also, selecting organisations which were founded during the 90s not only assured that organisations have a similar age, which is an important background factor, but it also meant that data sources on these groups were available for earlier periods of their organisational life.

The Case Selection Process

The British organisations were selected from a list of associations compiled for a survey conducted by the Regulating Civil Society project at the University of Exeter³¹, whilst the Dutch organisations were selected from various lists of associations gathered for the purpose of this study. More specifically, the UK list is based on the last available electronic version of the Directory of British Associations 2009 and represents the most up to date and inclusive source on voluntary membership organisations in the UK. The sample includes both charities and non-charities, and organisations which vary in their purpose. The checked lists in the Netherlands included selected organisations in policy fields of interest from a survey list used for the Dutch Interest Group Survey administered during spring-summer 2016 within the framework of the Comparative Interest Group Survey Project³², the ANBIs association list retrieved data from the Dutch tax authorities, the Pyttersen's Almanac 2014, organisations registered with the Central Bureau on Fundraising and other lists of environmental and health organisations available online.

The organisational lists were coded for the policy field, and then organisations in the fields of health and the environment were additionally coded for the presence

³⁰ The only exception is Vitiligo.nl which was founded in 1989 but accessed legal personality in 1990.

³¹ The survey page of the ‘Regulating civil society’ project:
<http://socialsciences.exeter.ac.uk/regulatingcivilsociety/surveys/>

³² For more information see: <https://www.cigsurvey.eu/data/>

of legal personality and tax beneficial status (the configuration of indirect benefits), membership size, membership type and group age. To assign a code for the type of indirect benefit the organisation had, organisations were checked in the public registers for legal entities and registers of organisations with tax beneficial status, including the: Register of the Charity Commission of England and Wales and the Companies House Register in the UK, the Chamber of Commerce and the ANBI public portal in the Netherlands. The additional information on membership size, type and group age were mainly retrieved from the organisational websites.

More specifically, to select the organisations in the UK I have coded the list of environmental and health organisations in two phases. In the first phase, I coded organisations' access or lack of access to indirect benefits: 1. no benefits, 2. company limited as guarantee (legal personality only), 3. charitable company (all indirect benefits), 4. unincorporated charity (charitable status only) and 5. other (Royal Charter and charitable incorporated company - CIO). I have assigned the codes by checking the Charity Commission register, the Companies House register, the mutual benefits entities register and sometimes the website of the organisation for the exact registration numbers. In the second phase of the coding, only for organisations coded in categories 1-3 I added the year of foundation, the type of membership (presence of individual members) and the size of membership. The information was gathered from the 'History' and 'About us' sections of organisational websites. I did not find all the necessary data for every organisation. Information on the year of foundation and type of membership are more often accessible than the size of membership. A sub-list of health and environmental organisations was created with the following characteristics:

- Founded in the 90s;
- Organisations with some political and/or public benefit activities;
- Organisations with individual members including those that have only individual members or mixed membership where individuals predominate;
- Those with national coverage and membership size big enough so all members cannot meet and decide through face-to-face contact.

The short-listed organisations were checked for availability of data such as annual accounts and reports, statutes, newsletters for the period since foundation

until 2016. Organisations for which more data was accessible and were comparable to one another were further shortlisted. Contact information from potential interviewees occupying various positions in the organisation were obtained. One group of six shortlisted organisations was contacted at first. Those organisations which were not responsive to the interview invitation after two reminders were excluded from the study and a substitute organisation with similar characteristics was contacted. Hence the final six organisations in the UK selected matched the theoretical criteria of interest but also were suitable for study due to the availability of documentation and interview data.

The health and environmental organisations in the Netherlands were selected later than the British cases. In the Netherlands the lists of environmental and health organisations were coded in three categories³³: 1. organisations registered as associations (only legal personality); 2. organisations registered as foundations (non-membership organisations with legal personality) and 3. organisations registered as associations with ANBIs status (all indirect benefits). Only category 1 and 3 were of interest to this study. The shortlisted associations and associations with ANBI status in the two policy fields were coded with the same criteria described above. The shortlisted Dutch organisations were comparable to the British organisations already included in the study. The four Dutch organisations for which interviewees accepted the invitation for participation were the ones included in the study.

The ten organisations which made the final cut were organisations which first and foremost satisfied the theoretical criteria and had different type of indirect benefits, were similar to each other in terms of age, membership size, coverage and type, and for which both documentation and interview data were accessible. Hence, the final list of organisations included in this study was affected by matters of access which will be discussed in more detail in the data collection section. At this point it is important to mention that from the contacted organisations in the UK, the chief executive of one organisation in the field of health explicitly refused to have the organisation involved in any way in the research. In the Netherlands, the potential interviewees identified in the case of one environmental organisation

³³ In the Netherlands organisations without any indirect benefits were not identified.

refused participation, even though the management was sympathetic to the research. In the end, the organisation was not included in the research.

Table 1: Selected Non-profit Membership Organisations in the UK and the Netherlands

Organisation	Country and policy field	Intensity of regulatory constraints	a. foundation b. access to legal personality c. gaining tax benefits	Type of members	Membership size (current)
Songbird Survival	UK environment	All indirect benefits	a. 1996 b. 2000 c. 2001	Citizens interested in protection of songbirds	1700
National Activity Providers Association	UK health	All indirect benefits	a. 1997 b. 1997 c. 1998	Professionals who provide activities in care homes	3000
Surfers Against Sewage	UK environment	All indirect benefits	a. 1990 b. 1994 c. 2012	Citizens interested in protection of marine life and the coastline	10 000
Young FoE Netherlands	Netherlands environment	All indirect benefits	a. 1990 b. 1991 c. 2012	Youth (16-28 years old)	600
Vitiligo Netherlands	Netherlands health	All indirect benefits	a. 1989 b. 1990 c. 2014	Patients with vitiligo and their families	1450
Patient Information Forum	UK health	Legal personality	a. 1997 b. 2008	Professionals working with health information provision	550
Dutch Association for Dragonfly Studies	Netherlands environment	Legal personality	a. 1997 b. 1997	Citizens interested in dragonflies monitoring and conservation	450
The National Association of Psychosocial Workers	Netherlands health	Legal personality	a. 1995 b. 1999	Professional psycho-social workers	250
NHS Alliance	UK health	No indirect benefits	a. 1997	Health professionals (GPs, nurses, etc.)	400
Hardy Orchid Society	UK environment	No indirect benefits	a. 1993	Citizens interested in research and conservation of orchids	800

3.3. Qualitative Case Study Research: Strategy of Data Collection and Analysis

Qualitative comparative case study research is a suitable research strategy to address the research questions because of the exploratory nature of the research. Qualitative data is suitable because of the wealth of information which allows changes to be traced over time, the mapping and contextualisation of outcomes, and helps provide an account of outcomes which deviate from the expectations (Rowley 2002, 16; Baluch 2012, 57). Qualitative case study research commonly uses multiple sources of evidence (Rowley 2002, 23; Yin 2018). Hence, the organisational case studies in this research are based on material comprised of diverse sources including publicly available reports and accounts, organisational newsletters and semi-structured interviews with past and current organisational actors. This approach of drawing on a combination of primary and secondary sources has been applied in other organisational studies of non-profit organisations which focus on various aspects of organisational form and evolution (see for example Baluch 2012, Halpin 2014, Guo and Zhang 2011, Halpin and Daugbjerg 2013; the qualitative part of the research from Hwang and Powell 2009). Therefore, this was identified as the most suitable research strategy for addressing the research question.

In the following section, I will present the data body and the data collection process whilst also discussing matters of access.

3.3.1. Legal Data: Primary and Secondary Sources

The legal data comprised of statutory regulation (laws and bylaws), official guidelines and application documents issued by enforcement institutions in England and the Netherlands. A list of relevant regulations per country and a list of cited expert interviews are included in Appendix A. To better understand the legal regimes and specific regulatory requirements, I relied on secondary literature written by legal scholars as well as guidelines by state agencies or legal firms produced for practitioners. With few exceptions, all of the relevant documents were accessible online. In November 2015, the Charity Commission, upon my request in accordance with the UK's Freedom of Information Act, provided me with a copy of older guidelines on the political activities of charities.

The Chamber of Commerce in the Netherlands answered clarification questions (August-September 2016) regarding the reporting requirements of associations. Additionally, I have interviewed two experts on charity regulation in the UK and one expert on non-profit law in the Netherlands. Via email, I further contacted three academics with expertise on ANBI status and non-profit regulation in the Netherlands, and two experts on companies' law and the law on unincorporated associations in the UK. The goal of the interviews and email consultations was to clarify and verify my understanding of specific aspects of non-profit law in the two countries.

3.3.2. Organisational Data

The organisational data is mainly comprised of documents and interviews. A short overview of types of documents used, number of interviews and additional contact via email per organisation is presented in Table 2. In Appendix B, a detailed list of cited documents and interviews is enclosed for each organisation. In the following section I will describe the data collection efforts.

Concerning the use of document sources specifically, document analysis is suitable for qualitative case study research, particularly when employed in combination with other qualitative research methods (Bowen 2009, 28-29). Documents are particularly useful for understanding the early life of the organisations under study, especially since interview data can be a limited source of data for this period (Bowen 2009, 31). Bowen nicely summarises the benefits of using documents: "[...] documents provide background and context, additional questions to be asked, supplementary data, a means of tracking change and development, and verification of findings from other data sources. Moreover, documents may be the most effective means of gathering data when events can no longer be observed or when informants have forgotten the details" (Bowen 2009, 31). Documents such as annual accounts and reports provide specific substantive content (e.g. budgetary spending, size of membership and staff, etc.) (Ritchie 2003, 35) and often are easily accessible in the public domain (Bowen 2009, 31). This makes them a good starting point for establishing baseline information, drawing initial case study narratives and in preparation for the interviewing phase (Baluch 2012, 78). The drawback of using documents is that

they have been produced for a purpose other than that of the research which means that they often lack sufficient detail (Bowen 2009, 32) and, as with other sources of data, carry certain biases (Hammersley 2008). For example, organisational newsletters are often a reflection of the stances of organisational leadership and depending on the editorial policy of the organisation they may reveal little on the members' perspective on organisational matters. Also, organisational accounts and reports – financial and non-financial - reported to public authorities or published on organisational website may be drafted in a way that highlight organisational achievements, whilst they reveal little information on difficulties organisations face. To overcome such limitations, I have obtained various types of documents, which were validated and complemented with interview data.

For the purpose of the organisational analysis, various types of available documents from public sources including public registers of organisations and organisational websites were collected. This included governing documents (i.e. internal rules, statutes, articles of incorporation), annual accounts and reports, descriptions of organisational history, newsletters, articles and reports on organisational events posted on organisation websites. In the UK, documents were retrieved from the Charity Commission and the Companies House registers for organisations with legal personality and charitable status. The Dutch Chamber of Commerce and the ANBI register offer very limited information on membership organisations due to the permissive regulatory constraints. Documents were, therefore, retrieved mainly from group websites and/or interviewees. Specifically, in the case of six organisations, newsletters and old statutes were obtained from interviewees who were informed of how the documents will be used in the research and that confidentiality was guaranteed. In addition, newsletters and annual accounts were accessed in the British Library in London and the National Library of the Netherlands in The Hague. The available newsletters were reviewed by the author on the premises of the libraries and the relevant information was selected and scanned for the purpose of further analysis. The selected pages included calls for AGMs and AGM reports, meetings of the executive, financial information, information on membership size and profiles of members of the executive board, project announcements and calls directed to

members. Newsletters and magazines, despite the potential leadership bias, represent a rich source of information on the internal life of organisations and were extensively used in the organisational analysis.

3.3.3. Semi-structured Interviews

While documents provide important baseline information for the organisational paths and particular aspects of organisational behaviour, often such data is limited or incomplete (Beyers et al. 2014, 175). Because of this and the need to make sense of information retrieved from documents and to understand internal processes that were not recorded in official documents, interviews are an important complementary data source. They are also useful for accessing other interviewees and obtaining additional documentation (Beyers et al. 2014, 177).

In this research, 30 semi-structured interviews were conducted in the period from March 2017 until July 2018. The UK interviews were mainly conducted during spring-summer of 2017, while the Dutch interviews were mainly conducted during Autumn 2017. A few additional interviews in the case of the UK were conducted during 2018. The period when the interview data was collected falls within the period for which ethical approval was given for this research.³⁴ A copy of the Ethical Approval is provided in Appendix C.

The semi-structured interview style falls somewhere between the closed questionnaire with pre-defined questions and answers and the ethnographic interview which occurs as a conversation without pre-defined structure (Leech 2002, 665). The semi-structured interview helps in obtaining comparability of data across organisations, whilst at the same time providing a space for the interviewee's specific insight concerning the internal development of their organisation (Edwards and Holland 2013). Interviews in this thesis were used as both primary data for understanding organisational processes which were not officially recorded as well as a complementary data strategy to triangulate the findings from the document analysis. The latter was particularly important because interviews may not be a reliable source of information about events that

³⁴ I was granted a Certificate of Ethical Approval by the SSIS College Ethics Committee for the period from 30th June 2016 to 20th September 2018.

happened years before the interview was conducted (Beyers et al. 2014, 178). Due to difficulties with memory recall, documents are used to cross-check information from interviews.

Research on non-profit organisations often relies on behavioural data from executive managers or trustees and has, therefore, an explicit executive bias (see Hwang and Powell 2009, 239). This research, in line with suggestions from the non-profit literature (see Guo and Zhang 2011, 343), made an attempt to interview multiple informants including people which occupy positions in the leadership, e.g. paid staff or unpaid members of the executive board, and 'rank and file' members. This was deemed important for getting a more accurate understanding of internal governance. As presented in Table 2, in eight of the ten organisations more than one informant was interviewed. However, in six cases, the research failed to recruit informants who are current members because organisations are not allowed to provide third parties with contact information on members, and such contacts could not be identified through the websites or newsletters of those organisations. To address this limitation, care was taken for at least one of the interviewees to have familiarity with matters of membership involvement and to have started off their engagement as an ordinary member. This means that in all cases we have an informant who occupied a position outside of the leadership, at least for some period of their engagement in the organisation. In most of the organisations, the gaps in the data were addressed through follow up correspondence with interviewees and other organisational actors who did not participate in face-to face interviews.

Accessing interviewees and the interview situation

Allan Cigler in his review of interest group research from 1991 has noted that the systematic study of interest groups and associations has been difficult because these organisations are private or semi-private entities and can be particularly sensitive about their reputation and visibility (1991, 100). He suggests that scholars have been discouraged to conduct in-depth case studies due to the difficulties related to gaining organisational access (Cigler 1991, 112). The experience with identifying and recruiting interviewees from smaller national non-profit membership organisations in UK and the Netherlands re-affirms this claim.

Even more, recruiting interviewees from smaller non-profits poses a particular challenge because such organisations often operate with limited human resources. They are mainly run on a day-to-day basis by a small paid team with limited time for research participation, or in some cases are run entirely by volunteers who have other daily jobs that prevent them from dedicating additional time to research participation.

Table 2: Overview of Documentation, Number of Interviews and Additional Contact

Organisation	Type of documents	Number of interviews	E-mail correspondence*
National Activity Providers Association	Governing documents Annual accounts and reports Newsletters	N = 2	N = 2
Surfers Against Sewage	Governing documents Annual accounts and reports Newsletters	N = 5	N = 1
Patient Information Forum	Governing documents Annual accounts and reports	N = 6	N = 0
Songbird Survival	Governing document Annual accounts and reports Newsletters	N = 2	N = 1
NHS Alliance	Governing documents AGM reports Website articles	N = 4	N = 1
Hardy Orchid Society	Governing document Newsletters Website reports	N = 1	N = 0
Vitiligo Netherlands	Governing documents Newsletters	N = 2	N = 2
Young Friends of the Earth Netherlands	Governing documents Newsletters	N = 4	N = 1
National Association of Psychosocial Workers	Governing documents	N = 1	N = 3
The Dutch Association for Dragonfly Studies	Governing document Magazine	N = 3	N = 2

Note: Queries sent over e-mail that involved the answering of interview questions or follow-up questions are counted under e-mail correspondence.

The first and crucial step in obtaining interview data was identifying a list of potential informants for each organisation. Email contacts and names of past and present organisational actors were collected from organisational websites,

LinkedIn and newsletters. In cases where I could identify names and could not find email addresses, I conducted additional searches online to identify contact information. In a few cases, some of the interviewees were identified and recruited through snowball sampling, a strategy in which respondents are asked to suggest other potential research participants, as can be helpful in cases when this is difficult because they are few in number (Atkinson and Flint 2004). This was used to connect mainly with actors who have been part of leadership structures in the past.

The second step was sending an interview invitation via email which familiarised the potential interviewees with my research topic and the broader ERC-funded project 'Regulating Civil Society' within which my doctoral research was conducted. The goal was to create a professional impression by conveying the research topic and clarifying to potential interviewees why their participation is crucial for the project's success (Beyers et al. 2014). Interviewees were given the option to choose between face-to-face interviews or phone/Skype interviews. Up to three reminders were sent for the interview invitation. The email template used for interview invitations is enclosed in the Appendix D.

All the interviews were conducted in English, which means that the Dutch informants were not interviewed in their native language. The interviews were not in-depth, probing for interviewees' personal experiences and perceptions, but rather about tapping into factual information regarding organisational events and practices. As such, conducting the interviews in English was acceptable because the research did not engage in interpretation of meanings that interviewees attach to their involvement in the organisation. Out of the 30 interviews, 7 were conducted in person, and the remaining 23 interviews were conducted via phone/Skype. Written consent was granted by interviewees and they were guaranteed anonymity and confidentiality of their data (the consent form used is presented in the Appendix D). For face-to-face interviews a hard copy of the consent form was provided, and for phone/Skype interviews it was sent via email. Additionally, interviewees were asked at the beginning of each interview for recording approval and were offered to see a copy of their interview transcript afterwards. All the interviews were recorded except for one in which notes were still taken by hand. Interviews lasted between 25 minutes and one hour.

3.3.4. Interview Topic Guide

The topic guide used in the interviews had pre-defined questions, yet it also allowed for flexibility and the changing of question order depending on the conversation. The first topic guide used in the UK was broader in its thematic scope and, in addition to the questions related to maintaining indirect benefits, internal governance and membership involvement, included questions on political activities over time and about state funding maintenance. Following the first round of fieldwork in the UK and a descriptive analysis of gathered data the scope of the research was narrowed down, and the topic guide was revised. The revised topic guide was used for the interviews in the Netherlands and the additional interviews conducted in the UK. The topic guide used is included in Appendix E.

The topic guide was designed in a way that could be adapted depending on whether interviewees were part of the leadership or membership. Moreover, the topic guide was divided into sections that could be easily omitted if the organisation did not have legal personality and/or tax beneficial status, meaning it could be used for organisations falling under different configurations of indirect benefits. As a warm-up question and to be able to locate the timeframe for which the interviewee could answer questions, the interview initially asked about the history of organisational involvement of the interviewee. Then, questions were asked regarding the governance and membership participation in decision-making in the early years after formation, the maintenance of legal personality and tax beneficial status and the possible changes in terms of formal governing rules, membership involvement and recruitment of skills that followed in the period after accessing such benefits (if applicable). All the interviewees, no matter their organisational role, timeframe of engagement or the configuration of indirect benefits of the organisation, were asked questions about membership participation in decision-making, i.e. attendance at AGMs, election of board members and opportunities to influence programmatic priorities. Also, all the interviewees were asked questions about the type of staff and board members involved over time. In the end, the topic guide asked about the major organisational reforms (milestones) of organisational development according to

the interviewee and provided a chance for the interviewee to add any relevant information which had been omitted in the conversation.

In the words of Beth Leech (2002, 665):

“In an interview, what you already know is as important as what you want to know. What you want to know determines which questions you will ask. What you already know will determine how you ask them.”

Hence, while trying to be faithful to the topic guide, the interviews differed in the organisation-specific questions and, depending on the availability of data before the interview, some focused more on obtaining organisation-specific information. In terms of the sensitivity of the questions, when asked about funding matters or state funding requirements respondents would be slightly reluctant to give elaborate answers. However, this did not affect the quality of data since these questions were not the primary concern of the research. Fortunately, in most cases annual accounts were a sufficient source for understanding the funding structure of organisations. In the first few interviews, interviewees had difficulty understanding what ‘access to legal personality’ means, hence in later interviews, the question referred to registration with relevant authority (e.g. Companies House).

3.4. Data Analysis and Criteria for Evaluation

The analysis comprised of several steps is summarised in Figure 2. The *first step* was an analysis of non-profit regulation in the two countries and the comparison of the results. The *second step* included a reconstruction of the organisational trajectories of the ten organisations. A case study folder was formed for each organisation and descriptive documents summarizing key information over time for each organisation were produced. The case study descriptions were created by following a template composed of five parts: basic organisational information, professionalisation, membership involvement, political activities and financial information. It is important to note that the data from the Dutch documents was selected and translated by a Dutch speaking research assistant who followed the same template. I have then jointly analysed the extracted data from the documents and the interview data in English to create the organisational case studies. The *third step* included cross-organisational comparisons that served as a basis for modification of the concepts and expectations of the study. This was

followed by another round of data collection to close the information gaps. Rowley accurately described the process of analysis for case study evidence:

“Analysing case study evidence is not easy. Typically, a case study database will include a multitude of different evidence from different sources. Data analysis of this rich resource is based on examining, categorising and tabulating evidence to assess whether the evidence supports or otherwise the initial propositions of the study. [...] The researcher trawls through the evidence seeking corroboration or otherwise of the initial propositions, and then records relevant evidence and makes a judgement on whether the positions have been substantiated.” (Rowley 2002, 24).

In a similar fashion, data was grouped in documents for each operational concept and the evidence was judged against the revised expectations.³⁵ In the end, the new data were integrated into the analysis and a written account was produced.

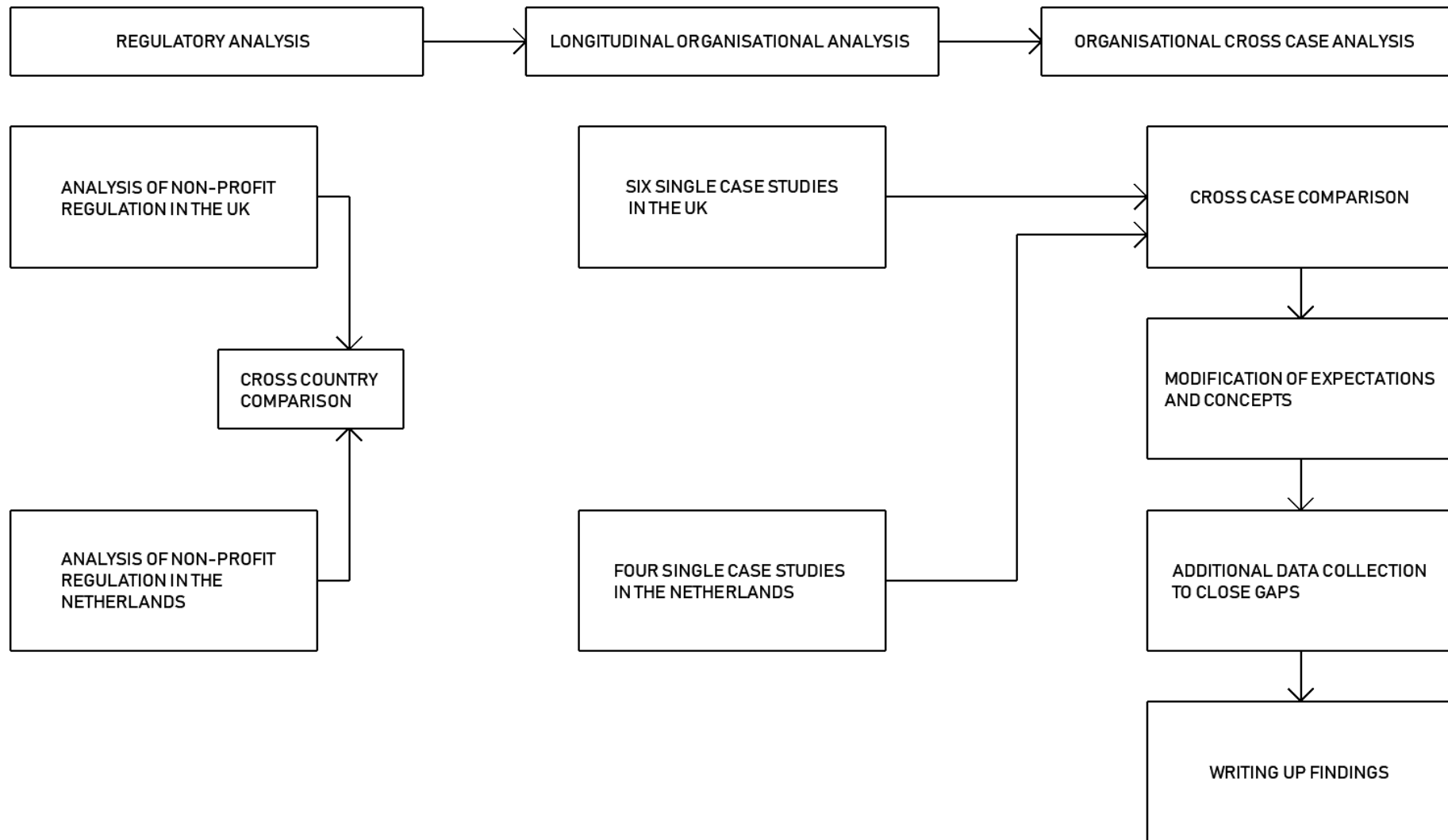
To assure the validity and credibility of the analysis, evidence from diverse sources was cross-checked and complemented, as well as evidence across one type of data source (i.e. data across at least two documents or across two interviews). This approach towards data collection and analysis is known as triangulation and it is commonly defined as the use of evidence from multiple and “different sources to corroborate the same fact or finding” (Rowley 2002, 23). Triangulation is key for mitigating the different biases associated with each type of data (Hammersley 2008; Bowen 2009; Yin 2018). Triangulation, as employed here, in addition to comparing different types of data (i.e. documents and interviews), also encompasses comparing data collected with one method of data collection i.e. comparison of multiple interviewees (Hammersley 2008, 2). Whilst most of the evidence presented in the analysis has been triangulated, there are some instances where data was particularly difficult to obtain and only one source of information was available for inclusion in the analysis. All the data sources used are transparently indicated throughout the analysis.

The final empirical analysis is based on an interpretation of all available and relevant evidence vis-à-vis the expectations, hence I want to recognize that the analysis of additional sources might have led to a different interpretation of results. Also, I cannot rule out that other researchers may come to different conclusions if they implement a different approach towards the measurement and analysis of the same data. Since this is an exploratory study of the potential ways

³⁵ The coding of data during all the phases was conducted by hand.

in which non-profit regulation correlates with aspects of internal governance, the focus is on understanding the role of law as a factor, and not proving a causal relationship. Nevertheless, the analysis takes into consideration rival interpretations on the causes of organisational change and accounts for them throughout the analysis (Rowley 2002, 24). Hence, I believe that the findings of the research 'enjoy' some level of external transferability (Slater and Ziblatt 2013, 14), and can be further assessed with new cases or by a large-N study design.

Figure 2: Sequence of Data Analysis (adapted from Yin 2018, 58 and Baluch 2012, 83)



3.5. Operationalisation of Concepts

In this section I present the operational definitions of the central concepts of the study. The operationalised concepts help to establish the link between the theoretical expectations and the empirical data.

Non-profit law encompasses the legal rules for constituting legal forms for non-profit membership organisations and the regulatory constraints related to maintaining indirect state benefits. The first premise is that legal regimes differ in the types of legal forms available for membership organisations, with some specifically regulating formal powers for members and others not. The second premise is that, regardless of the non-profit tradition (common law or civil law) and the type of regulatory regime (constraining or permissive), within a regulatory regime we can distinguish between up to three configurations which differ in the combinations of indirect benefits they offer. Consequently, they further differ in the type and intensity of regulatory constraints (i.e. reporting requirements) organisations are exposed to.

To assess the differences in non-profit law in the two countries, firstly I have compared the different legal forms available, defined as the types of organisational structures an organisation can adopt from a legal perspective. The focus was on legal forms for membership organisations. To establish the differences, I have mapped *the presence or absence of explicit mandatory requirements for members' participation at the annual general meeting and election of the members of the board* for each of the legal forms available (nominal measure). The focus is on the rights to elect the executive because the law does not explicitly specify voting rights for programmatic priorities in the two countries.

Regulatory constraints are defined as the set of legal requirements, costs and obligations the organisation has to comply with in order to maintain receipt of indirect state benefits. Depending on the type of indirect benefits organisations access, within each regulatory regime we can identify up to three configurations which differ in the combinations of indirect benefits and the type and intensity of regulatory constraints they are exposed to. To map out and compare the concrete regulatory constraints related to indirect benefits and their enforcement in the two

countries, I use and adapt analytical criteria (see Table 3) developed by Bolleyer (2018).³⁶ These analytical criteria travel well across legal systems (civil vs. common law countries) and are based on an organisation-centred approach towards regulation. These criteria have been stressed as relevant in other studies (see the NGO Regulatory Index by Bloodgood et al. 2013). The analytical tool in Table 3 is applied to mapping both reporting requirements related to maintaining legal personality and tax beneficial status, with the difference of one additional criterion on political constraints (i.e. engagement in partisan activities or pursuing political purposes) applied only to maintaining tax beneficial status. This additional code on political constraints is present in Bloodgood et al.'s (2013, 717) index of NGO regulation and I include it in the analytical tool because it is an important type of constraint which might potentially affect organisational governance.

Table 3: Analytical Tool for Mapping Requirements for Maintaining Indirect Benefits

Requirements for maintaining legal personality and beneficial tax status:
1) Updates of any information
2) Updates are put online or otherwise made publicly available
3) Regular reports on non-financial matters
4) Periodicity of non-financial reports
5) Non-financial reports are put online or otherwise made publicly available
6) Regular reports on financial matters
7) Periodicity of financial reports
8) Submissions have to be audited by external auditor
9) Financial information is put online or otherwise made publicly available
10) Constraints on engagement in partisan activities or pursuing political purposes (<i>code only applicable to maintaining tax beneficial status</i>)

³⁶ The criteria are used for comparative assessment of regulation concerning different types of voluntary organisations in advanced democracies.

The coding scheme is applied to data consisting of statutory legislation (laws and bylaws), court rulings, official guidelines and application documents issued by enforcement institutions in the UK and the Netherlands since 1980.³⁷

The thesis is exploring the impact of non-profit law on the following aspects of governance: formal voting rights and the related rule-based participation, and board professionalisation. Formal voting rights are defined as the rights of ordinary members to attend the annual general meeting and elect their representatives, and rule-based participation is defined as the use of these formal voting rights in practice. Two nominal measures were devised. The first measure mapped the absence or presence of rights for the wider membership to attend AGMs and elect the members of the board as stipulated in the governing documents of the organisations. The units of analysis were the sentences in the governing documents. A similar dummy measure which records the presence or absence of the mechanism of board elections has been implemented by other authors (see Guo and Zhang 2011, 331; Leardini et al. 2016). The analysis was complemented by information from interviews and newsletters. Rule-based participation is measured as the presence or absence of members' opportunities for: participation at AGMs, election of the executive and voting on programmatic priorities in practice. The newsletters were coded to identify advertisements or invitations for members to attend AGMs, elect the members of the board and vote on programmatic priorities. Interview questions similarly asked if members were invited to participate in these activities.

Board professionalisation is defined as the recruitment of skilled volunteers with competencies (skills, experiences and knowledge) relevant for organisational maintenance outside of the organisational membership to fill unpaid positions within the executive organ. The concept of board professionalisation has two elements, the first being external recruitment and the second being recruitment of professionals with managerial, financial and accounting and/or legal and policy skills. If the data shows that organisations satisfy both elements, then it is considered that the organisation underwent board professionalisation.

³⁷ The organisations in the analysis are founded in the late 80s and early 90s to be able to understand how regulation affects them over time and the legal analysis is tracing legal changes from 1980 onwards.

Organisations coded with a 0 did not recruit board members externally with particular skills relevant to organisational maintenance in mind. Organisations were coded with a 1 if the organisation – after being exposed to regulatory constraints – sought board members outside of the organisation with particular competencies relevant to organisational maintenance, including managerial and policy skills. The measure encompasses managerial and policy skills because these are difficult to disentangle empirically, and sometimes board members are recruited because of both. As Bramble (2000) notes, it is difficult to empirically track the professional profiles of organisational officials. This is especially true for tracking professional profiles of board members over time due to data limitations. Therefore, here I have relied on a mix of information from newsletters, websites and interview data. Interviews asked about how members of the executive board were recruited – outside or within the organisation – and about the kind of competencies commonly represented on the board. Specifically, respondents were asked if the organisation looks for members with specific competencies relevant for organisational maintenance in mind, and whether their recruitment practice has changed over time.

The last concept of interest in the study is consultative participation which is defined as the opportunities for members' input on organisational matters and programmatic priorities beyond the annual general meeting. This input is non-binding for the leadership. The operational concept has two categories, low consultative participation when members have few sporadic direct and indirect opportunities for input, and high participation where members have many frequent direct and indirect opportunities to give input. I have coded data for both direct opportunities for feedback, including surveys, online forums, mailing lists, events (i.e. training, conferences and other meetings), and indirect opportunities for feedback, including advisory boards, policy committees and networks of regional representatives. I agree with Saidel (1998) that advisory groups are a way to involve most active and prominent members and compensate for the lack of rule-based participation among the wider membership. The same applies for other "middleman" structures recruited by the organisational entrepreneur (Moe 1980, 45), and this is why I have counted these mechanisms as opportunities for consultative participation. Interview data, documents and website information

were coded for the different opportunities for consultative participation offered by the organisations.

3.6. Alternative Factors

Although interested in exploring the potential impact of one factor, I recognize that different factors can impact the outcome (equifinality) and there can be multiple causes interacting (configurational causality) to produce an outcome (Rohlfing 2012, 7). The research design aims to 'control' for organisational density by focusing on different policy fields and for the effect of age by selecting groups founded in the same decade. In addition, the empirical analysis will pay attention to other alternative factors to be able to discern the influence of non-profit law on the relevant aspects of internal governance. Those alternative factors are: types of funding source (dependence on state funding related to service delivery vs. dependence on funding from members), participation in self-regulatory mechanisms for good governance, changes in membership size, membership type and core mission.

The types of funding source or the dominance of one type of source over the other can affect members' rights and involvement, as well as board professionalisation. Specifically, reliance on members for funding (i.e. membership dues, sponsorships, payments for services) enhances the role of members, and we might expect that organisations that rely on members will provide formal voting rights and have members represented on the board. In contrast, dependence on external sources of funding, and particularly reliance on state funding has been related to the diminished role of members and increased reliance on professionals. In fact, board professionalisation has been linked to the increased dependence on state funding (Smith 2011, 214; Smith and Lipsky 1993; Guo 2018). Hence, the analysis accounts for the types of funding source the organisations rely on during their lifetime and in periods of change.

The literature has pointed at the increased introduction of self-regulatory certification systems for good governance across democracies (Phillips and Smith 2014, 1150; Phillips 2013, 883). Organisations that participate in self-regulatory initiatives that demand compliance with good governance standards may feel pressures to undergo centralisation of the organisational structure and

board professionalisation. To account for this, I pay attention to whether organisations have been part of such a scheme during their career.

The effect of membership size on member involvement has often been highlighted in the literature (Michels 1962; see also Saunders 2009; van Puyvelde et al. 2016, 900). Namely, scholars believe that national organisations with massive memberships will structure themselves hierarchically and bureaucratically and would not be able to engage meaningfully with the rank and file membership. Organisations with large memberships are expected to experience troubles with organising meetings, decision-making efficiency and increased internal conflict (van Puyvelde et al. 2016, 901). In contrast, small and medium sized groups are more likely to offer opportunities for membership involvement (Clarence et al. 2005, 142; Saunders 2009). Even though the selected organisations, based on membership size count in the past few years, qualify as small national organisations, some of them have experienced rapid changes in membership size during their lifetime. Thus, in the analysis we account for such changes that may potentially affect the organisational structure and role of members.

Another important factor that may affect the organisational structure and the role of members is the nature of the represented interests (type of members). The proposition comes from the interest group literature and is based on the distinction between public interest groups that are characterised by a mismatch between their membership and their constituency, and sectional groups where there is no such mismatch (Halpin 2006; Halpin 2010; Binderkrantz 2009). Specifically, scholars propose that these two interest group types will substantially differ in their internal democracy. Members of organisations that represent broader interests have low costs and barriers for exit from the group and opportunities for democratic participation will be of little value for them, hence the expectation is that they will centralise decision-making processes (Barakso and Schaffner 2007, 187; Binderkrantz 2009, 661). On the other hand, members of sectional groups join because of some direct interest and, hence, have stronger motives to influence the group agenda (Binderkrantz 2009, 661). This will be translated into more opportunities for participation. The empirical evidence is inconclusive, with some authors finding that sectional groups (i.e. professional

associations) have higher levels of internal democracy, whilst patient groups are “laggards” when it comes to internal democracy (Binderkrantz 2009, 670). The selected organisations vary in the type of membership (i.e. nature of represented interests) and this will be considered as a possible factor that shapes the governing model.

Finally, the organisational mission has been singled out as a factor that shapes organisational structure (Minkoff and Powell 2006; Halpin 2014) and representational capacities (Guo and Zhang 2011). It has been suggested that groups driven by the logic of influence (Schmitter and Streeck 1999) are expected to increase the role of professionals and diminish the role of members within the organisation (Jordan 2012, 97). Therefore, to be able to ‘control’ for the influence of mission, the study selected organisations with varying levels of ‘politicalness’.

3.7. Conclusion

In this chapter I have presented the general methodological approach adopted. I have also presented the two levels of case selection and the reasoning behind it. I then detailed the legal and organisational data collected and produced for the study, followed by a presentation of the stages of data analysis and the overarching data analysis approach. Lastly, I present the operational definitions of the central concepts and the alternative factors accounted for in the analysis.

In summary, the study implements a qualitative comparative case study approach suitable to address the exploratory nature of the research. Analytically, the study synthesizes a legal analysis of available legal forms and regulatory constraints related with indirect state benefits, and an organisational level analysis of non-profit governance in *smaller non-profit membership organisations* in the UK and the Netherlands. The two countries represent contrasting non-profit regimes, the UK being a common law and relatively constraining regime and the Netherlands being a civil law and relatively permissive legal regime for non-profit groups. As a result, they differ in the legal forms available for non-profit membership organisations. Furthermore, ten non-profit membership organisations were selected *that operate on a national level in the fields of health and the environment*, six being based in the UK and four in the Netherlands. The organisations operate in the available legal forms for membership organisations

and represent different configurations of indirect benefits given their exposure to different intensities of regulatory constraints, ranging from high constraints to low or none. In that sense, they represent diverse cases (Gerring 2009).

In terms of data, the study relies on multiple sources of evidence including publicly available reports and accounts, organisational newsletters, and 30 semi-structured interviews with past and current organisational actors. The legal data comprised of statutory regulation (laws and bylaws), official guidelines and application documents issued by enforcement institutions in England and the Netherlands, secondary sources written by legal scholars and consultations with seven legal experts.

The data analysis was conducted in three main stages, including an analysis of non-profit law in the two countries, within case study analysis of the ten organisations and, finally, a cross organisational analysis. The legal and organisational data were coded according to six measures, and data was triangulated to overcome the biases related to different sources of data. This evidence was assessed against the theoretical expectations. The analysis further accounts for alternative factors such as types of funding source, participation in self-regulatory mechanisms for good governance, changes in membership size, membership type and core mission. In the following chapters I will begin to present these analyses in greater depth. As such, attention will now be turned to providing an account of non-profit law in both the UK and the Netherlands.

4. Non-Profit Regulation on Legal Forms and Tax Beneficial Status in the UK and the Netherlands

4.1. Introduction

The non-profit regulation I focus on in this thesis stipulates the available legal forms for non-profits with members and the legal requirements and obligations organisations have to comply with in order to maintain legal personality and beneficial tax status as forms of indirect state benefits. The main argument is that regulation affects the internal governance in two ways, through the available legal forms within the non-profit regime and through maintaining these indirect state benefits. The thesis wants to highlight that the choice of legal form shapes the adoption of formal decision-making structure depending on whether this is regulated or not by law. The assumption is that it is more likely that formal voting rights will be allocated to members in organisations which operate in countries where the law specifically mandates adoption of members powers to oversee the work of the board at the annual general meeting and elect the members of the board. Maintaining indirect benefits requires compliance with specific reporting and accountability requirements, and organisations exposed to higher regulatory constraints are more likely to undergo board professionalisation. Previously we presented up to three configurations which represent combinations of indirect benefits which differ in the intensity of regulatory constraints they are exposed to. These three configurations range from organisations with ‘all indirect benefits’ which are exposed to highest regulatory constraints to organisations without any indirect benefits which are exposed to few regulatory constraints or none.

This chapter presents the analysis of laws which regulate legal forms available for non-profits with members and the maintenance of indirect benefits in the UK and the Netherlands. Firstly, the analysis describes the differences in the offer of legal forms for membership organisations in the two countries with focus on the differences in requirements for members right to participate at an annual general meeting and appoint members of the board. The focus is on the rights to elect the executive because the law does not explicitly specify voting rights for programmatic priorities in the two countries. For the purpose of cross-country comparison, I have coded the presence of explicit mandatory requirements for

adoption of members' rights to elect the board in the regulation on legal forms and tax beneficial status since 1980 until today.

Secondly, differences in intensity and character of requirements for maintaining legal personality and tax beneficial status (reporting and monitoring) are presented. As previously outlined (see section on operationalisation), I use analytical criteria based on Bolleyer (2018) and adapted for this study, to map out and compare reporting requirements and their enforcement across countries. These analytical criteria are used for comparative assessment of regulation concerning different types of voluntary organisations in advanced democracies, travel well across legal systems (civil vs. common law countries) and are based on an organisation-centred approach towards regulation. The coding scheme is applied to data consisting of statutory legislation (laws and bylaws), court rulings, official guidelines and application documents issued by enforcement institutions in the UK and the Netherlands since 1980.³⁸

The analysis shows that in the UK adopting formal voting rights for the wider membership i.e. right to participate at an annual general meeting and elect the board in organisations operating in any legal form available is optional, while in the Netherlands the legal forms available for membership organisations grant special powers to the members to control and elect the board and attend the annual general meeting. Reporting requirements and statutory supervision are higher and more constraining for organisations which have 'all indirect benefits' in the UK and the Netherlands, while organisations operating with only legal personality or 'no indirect benefits' are exposed to lower regulatory constraints.

In the next sections, I will present first the general legal set-up for non-profit membership organisations in the UK and the Netherlands. Secondly, I will focus on the governing structures of available legal forms and the presence or absence of regulatory requirement for formal voting rights of members. Thirdly, I will analyse the regulatory constraints related to maintaining legal personality and tax

³⁸ The organisations in the analysis are founded in the late 80s and early 90s so to be able to understand how regulation affects them, the legal analysis traces legal changes from 1980 onwards.

beneficial status in the two countries. Lastly, the chapter will conclude with a summary of findings and the country-specific expectations.

4.2. Common Law Non-Profit Tradition: Legal Forms and Charity Status in the UK

The UK has a highly developed statutory regulation and policy regarding the wider voluntary sector and particularly for organisations with tax beneficial status – charities. UK is representative of the common law non-profit tradition, and while the concept of the ‘charity’ is central, legal forms in common law non-profit tradition are usually more general and not exclusively developed for organisations with non-profit purposes (van der Ploeg 2009, 6-7; Cordery et al. 2016, 293). There are no specific legal forms for membership organisations, but the legal forms available can be used by both organisations with members and without. Here I focus only on regulation enacted in England and Wales because most of the organisations in the population are governed by this regulatory regime and Scotland and Northern Ireland³⁹ have a similar regulation concerning charities. In Table 4 a summary of the three configurations of indirect benefits in focus are presented along with a list of relevant statutory regulation and registration bodies.

Non-profit membership organisations which fall within the configuration of ‘no indirect benefits’ in the UK operate as *unincorporated associations*. Unincorporated associations do not have a legal personality and are “essentially an informal association of members who share a common purpose that is not profit making” (Synge 2017, 363; Kendall and Knapp 1993, 261). This legal form is not regulated by statutory law but by common law, mainly including contract law and trust and property law (Steward QC 14.09.2018). Members of the unincorporated association are “bound to each other by mutual contracts on the terms of the rules of the association” (Steward QC et al. 2011, 4). The unincorporated association cannot enter into contracts, instead contracts are made by the individual members (Steward QC et al. 2011, 5). Also, the property of an unincorporated association must be held by an individual on behalf of the

³⁹ The regulation for companies limited by guarantee applies to the overall jurisdiction of the United Kingdom, however the countries have different legislation and regulators for charities. The focus is on charity regulation enacted in England and Wales.

organisation (Thomas 1997, 313). While they do not have the benefits of legal personality, they also do not face the liabilities that incorporated organisations face – they cannot be sued or sue in its own name, nor they can be guilty of criminal offence (Steward QC et al. 2011, 5; Thomas 1997, 313). Unincorporated associations do not report to the Companies House and have lower management costs (Steward QC et al. 2011, 7).⁴⁰ Unincorporated associations in the UK can qualify as charities by registering with the Charity Commission (Piper et al. 2012, 69).

Table 4: Summary of Laws and Registration Bodies for the Three Configurations in the UK

<i>Configuration of indirect benefits</i>	<i>UK form</i>	<i>Key statutory regulation</i>	<i>Registration body</i>
<i>without indirect benefits</i>	Unincorporated associations	Regulated by non-statutory law	No registration body
<i>with legal personality</i>	Company limited by guarantee	Companies Act 1985 Companies Act 1989 Companies Act 2006	Companies House Her Majesty's Revenue and Customs
<i>with legal personality and tax beneficial status</i>	Charitable company	Companies Act 1985 Companies Act 1989 Companies Act 2006 Charities Act 1960 (repealed) Charities Act 1985 (repealed) Charities Act 1992 Charities Act 1993 Charities Act 2006 Charities Act 2011 Charities (Protection and Social Investment) Act 2016	Companies House Charity Commission Her Majesty's Revenue and Customs

Company limited by guarantee is a company where members give small investment to guarantee the assets of the company upon dissolution and it is a form used for non-profit activities. Companies limited by guarantee were regulated by the Companies Act 1985 and 1989, which were replaced by the Companies Act 2006 (Piper et al. 2012, 67). In terms of benefits, organisations

⁴⁰ The exception being when they engage in trading activities, in which case they should submit company tax return similar to companies limited by guarantee (UK Government 30.06.2016).

which register as companies limited by guarantee in the UK gain corporate personality and limited liability (Kendall and Knapp 1993; Gray 2000, 80). This means that the company limited by guarantee can own, inherit, purchase and sell property in its own name, take loans, open bank account, enter into contracts, sue and be sued by others etc. In order to gain legal personality, organisations are obliged to register with the Companies House, a government agency which operates as a register for all companies (Synge 2017, 267).⁴¹ Since 2013, non-profit membership organisations can also register as Charitable Incorporated Company (CIO) with the Charity Commission and gain legal personality and charity status with the one-stop registration procedure (Cordery et al. 2016, 298). The share of CIOs is very small in comparison to organisations incorporated as companies limited by guarantee, hence I only focus on regulation concerning the latter.⁴²

Since the 19th century there has been a strong statutory framework regulating charities in England and Wales (Dunn 2016, 22). In fact, “[c]harities are the most heavily regulated form of organisation within the social economy, primarily because they are the only form to receive direct fiscal subsidy through the tax system and to ensure their veracity for those wishing to make private donations.” (Smith and Teasdale 2012, 161). Non-profit membership organisations interested in gaining tax beneficial status are required to register as charities with the Charity Commission and the tax authorities (HMRC).⁴³ ‘Charity’ is not a legal form but “quality given to trusts, unincorporated associations and non-profit corporations because their aim is charitable” (van der Ploeg 2009, 10).

Charitable company is a ‘company limited by guarantee’ which has charitable status and has to comply with both company and charity law, which means they

⁴¹ Organisations can incorporate also through Royal Charter or they can incorporate as CIOs under the Charities Act 2006. Non-profit organisations could operate as industrial and provident societies, which were renamed as co-operative or community benefit societies in 2014 with a new law regulating these forms. Industrial and provident societies are rare, and they were mainly set up to pursue interests of local communities such as local clubs, allotment societies, historical societies, housing associations etc. (Company Law Solutions Ltd 2018).

⁴² And even though the new legal form cuts the burden of double reporting, in terms of governing structure, the CIO, same as the charitable company can chose between “two-level structure of members electing trustees or a single level where the only members are the trustees” (Cordery et al. 2016, 294). This means that membership organisations in the UK have the freedom to choose to grant or not formal voting rights to their members.

⁴³ They are required to register with the tax office to be able to use Gift Aid, “a tax effective giving scheme” (Hadzi-Miceva Evans 2015, 26).

are subject to double accounting and reporting obligations (Cordery et al. 2016, 292). In return, charitable companies enjoy significant tax exemptions including exemptions from tax on income from donations, corporate gains tax, trading income, corporate tax, inheritance tax when people leave legacies to charities, income from buying and renting property for charitable purposes etc. (Cassey 2013, Piper and Reed 2016, Budding 2013, 30). Moreover, since the late 1980s benefits for charitable donors have been expanded significantly through Payroll giving and Gift Aid. The Gift Aid scheme benefits both (higher paying) donors and the charity. Charities can claim repayment of basic rate tax on donations received from individuals (Cassey 2013). This means that charitable status brings more direct funding from private donors and attracts further funding (Budding 2013, 28; Synge 2017, 377).

In England and Wales, charitable status is regulated with the Charities Act 2006 and Charities Act 2011, where thirteen charitable purposes are clearly defined. The criteria for charitable status are: organisational mission to fall under the charitable purposes and the organisation to fulfil the public benefit test (Charity Commission for England and Wales 2013; Budding 2013, 28). The Charity Commission checks whether the purposes of an organisation are charitable, including the interpretation of purposes which have not been considered charitable so far (Luxton 2013, 13). Before 2006, what is charitable was decided by the registration practice of the Charity Commission since there were very few court cases (Meakin 2009, 27), and the Charities Act 1993 did not give a statutory definition of charitable purposes (s46).⁴⁴ The four heads of charitable purposes in common law (Pemsel classification, 1891) which were guiding the classification of what is charitable were 'replaced' with the Charity Act 2006's statutory list of thirteen charitable purposes. Even though it specified the charitable purposes, the Charities Act 2006 did not change their meaning.⁴⁵ However, with the

⁴⁴ The Charities Act 1993 created the new functions of the Charity Commission (Malik 2008, 48, Bies 2010). This act "called for increased reporting and granted greater power and resources to the public regulation arm, the Charities Commission" (Bies 2010, 1073).

⁴⁵ The first three heads of the Pemsel classification (1891), 'relief of poverty, advancement of education and advancement of religion' were 'copied' in the Charity Act 2006 (Luxton 2009, 8). The fourth head (being beneficial to the community) was the basis for recognizing new charity purposes by the courts or the Charity Commission (Luxton 2009, 4). All the charitable purposes which were recognized through interpretation of the fourth head became part of the charitable purposes list in the Charities Act 2006.

Charities Act 2006 *the presumption of public benefit* was removed⁴⁶ (s 3(2)) and this remained unchanged in the Charities Act 2011 (s 4(2)), which means that charities which register should demonstrate the public benefit of their charitable purpose. Maintaining charitable status requires most of the activities of the organisation to be directed towards the achievement of the charitable purpose.

In terms of legal forms in the UK, non-profit membership organisations operate as unincorporated associations and companies limited by guarantee. We can identify the following configurations of indirect benefits: without legal personality (unincorporated associations), with legal personality (companies limited by guarantee) and with both legal personality and charitable status (charitable company).⁴⁷ When an organisation is moving from an unincorporated association to a company limited by guarantee or charitable company, the organisation will become exposed to higher regulatory constraints.

4.3. Civil Law Non-Profit Tradition: Legal Forms and Tax Beneficial Status in the Netherlands

The Netherlands is representative of the civil law non-profit tradition where “the phenomenon of legal personality is more important” and specific legal forms for non-profits are available (van der Ploeg 2009, 7). Similar to other civil law countries, the legal forms available for non-profit organisations are informal association, formal association and foundation⁴⁸ (Overes 2017, 466). Book 2 of the Dutch Civil Code [Burgerlijk Wetboek 1976] provides the legal framework for different legal forms in the Netherlands (Russell 2018). The law on legal forms is regarded as flexible and they are easy to establish (Koele 2017; Knijnenburg 2014). The foundation cannot have a membership i.e. it is legally prohibited and “[i]n doctrine this prohibition is mostly interpreted to mean that a situation should

⁴⁶ The ‘public benefit requirement’ was presumed for the three old heads of the Pemsel qualification (relief of poverty, advancement of education and advancement of religion).

⁴⁷ There are also unincorporated associations registered as charities, however since there is no equivalent form to this one in the Netherlands, they are not in the focus of this study.

⁴⁸ Foundation is a legal person without members which has to fulfill its statutory objectives through allocation of assets and profit (Overes 2017, 466; Russell 2018). There are very few rules on the internal structure of foundations in the Book 2 of the Civil Code (Overes 2017, 470), and the only mandatory requirement is to have a management board (Burger et al. 2001, 26). Groups that want to avoid internal democratic structure where members appoint the board usually chose to incorporate as foundations (van der Ploeg 09.10.2017), and this is the most used form by non-profits with public benefit status (Koele 2017).

not exist in which a body acquires a position similar to that of the general meeting in the association” (Burger et al. 2001, 26). Non-profit membership organisations can take the legal forms of informal associations *without notarial deed* and formal associations *with notarial deed* (Civil Code, Book 2, Title 2.2 Associations). Both formal and informal associations have to be established by at least two persons (Overes 2017, 467).

Formal association (in Dutch ‘vereniging’) is formed by a notarial deed which contains the statutes, it has full legal capacity and must register with the Chamber of Commerce (in Dutch: Kamer van Koophandel) to gain limited liability (Article 2:29). In the Netherlands “there is no government involvement in the establishment of associations and foundations, and government has no supervisory competences with regard to the activities of the [organisations]” (Overes 2017, 474). While external supervision of foundations is more extensive, external supervision for associations is very limited in civil law (Overes 2017, 475). The association as a legal form is present across civil law non-profit regimes and it is “perhaps the most important legal form for organizing interests” in democratic countries (Freise and Hallmann 2014, 4). Associations across democratic countries have a membership assembly that elects and gives authority to the executive board (Freise and Hallmann 2014, 4).

Informal associations gain legal capacity at the moment of their establishment; however, they have restricted capacity i.e. board members have personal liability, the entity cannot inherit, cannot acquire real estate etc. (Overes 2017, 467). Informal associations have the possibility to register with the Chamber of Commerce to limit the liability of the members towards third parties (Civil Code Article 2:30; Overes 2017, 467). According to Brasz (1995, 25), associations are mainly established by a notarial deed because associations without notarial deed are “limited in its functioning” and “[o]nly small associations like a club can do so”. Registering as a formal association is an easy process, thus many groups decide to incorporate (van der Ploeg 09.10.2017). Moreover, having legal personality is often a precondition for receiving subsidies, which is an additional incentive for groups to register. Only formal associations can gain tax beneficial status, so there is no equivalent configuration where the organisation has tax beneficial status without being legal personality like in the UK. The three configurations

identified in the Netherlands are presented in Table 5, together with the statutory regulation and relevant registration bodies.

Table 5: Summary of Statutory Regulation and Registration Bodies for the Three Configurations in the Netherlands

<i>Configuration of indirect benefits</i>	<i>Forms in the Netherlands</i>	<i>Key statutory regulation</i>	<i>Registration body</i>
<i>without indirect benefits</i>	Associations without notarial deed – informal associations	Civil Code, Book 2, Title 2.2 Associations	Can choose to register with the Chamber of Commerce
<i>with legal personality</i>	Associations with notarial deed – formal associations	Civil Code, Book 2, Title 2.2 Associations	Must register with the Chamber of Commerce but there is no supervisory body
<i>with legal personality and tax beneficial status</i>	Formal associations with ANBI status	Personal Income Tax Act 2011 General Tax Law 2012	Chamber of Commerce Tax Administration office

Formal associations are exempted from income tax as long as they do not engage in business activities (Russell 2018). Groups gain special tax benefits by applying for the status of "institution for general or public benefit" (Dutch: algemeen nut beogende instelling, ANBI; the abbreviation will be further used in the text). There is no special legal form for organisations with public benefit purpose (Overes 2017, 479). Incorporating as a formal association or foundation is a precondition for gaining ANBI status (Russell 2018), unlike in the UK where unincorporated associations can become charities. To be recognized as an ANBI, the organisation applies to the Tax Administration (Article 5b General Tax Law 2012; Budding 2013, 10). The ANBI status is defined in the tax legislation (General Tax Law 2012) and there were considerable changes regarding the access to tax benefits in the past decade, and specifically in 2006, 2008, 2010 and 2012 (Hemels 2012, 1). Since 2008, associations which want to obtain ANBI status have to register with tax authorities and meet certain requirements (Article 41a-c Decree Minister of Finance 1 February; Hemels 11.09.2015). Before 2008, registration with the Dutch Tax authorities was not necessary to qualify as an

ANBI (Hemels 11.09.2015). Before changes in the General Tax Law 2012, the definition of tax beneficial status was included in the Personal Income Tax Act 2011.

The ANBI status brings various benefits for both the organisations and their donors i.e. periodic and ordinary gifts from individuals and companies are tax deductible under certain conditions (Overes 2017, 480; Russell 2018). The government encourages donations to ANBIs through tax exemptions on personal and corporate income tax, gift tax and inheritance tax (Hemels 2012, Hemels 2015, Overes 2017, 480). Under certain conditions ANBIs can get return of 50% of the tax on energy (Russell 2018). Also, having an ANBI status is an “informal requirement for fundraising” since organisations subjected to the reporting requirements of the tax office are perceived as more transparent (Budding 2013, 10).

In the Netherlands, according to the General Tax Law (2012), organisations are required to direct 90% of their expenditures to public benefit activities in order to be granted ANBI status (Hemels 2012, 2; FATF/OECD and IMF 2011, 263). Until 2012, the Dutch Tax Authorities evaluated on a case-by-case basis whether organisations are pursuing public benefit activities since there was no definition of public benefit activities in the law (Hemels 2012, 2). According to a court ruling (Supreme Court, BNB, 1994/280), before 2012 “if an organisation serve[d] both its members and the public at large, as a rule at least 50% of the activities should be for the public benefit in order to qualify as a public benefit organisation” (Burger et al. 2001, 24). The article 5b of the General Tax Act (2012) for the first time provides an exhaustive list of public benefit activities (full list is provided in Appendix A). This means that no other type of public benefit activities can be recognized than those included on this list.

In summary, in the Netherlands there are legal forms available specifically for membership non-profit organisations – informal and formal associations. The informal associations have limited legal capacity (gaining legal personality is a private act), whilst formal associations have full legal capacity. In practice, small local clubs operate as informal associations and due to the easy procedure for incorporation, non-profit membership organisations almost exclusively chose to operate as formal associations (Brasz 1995; van der Ploeg 09.10.2017). Hence,

in the Netherlands, in terms of configurations of indirect benefits we can distinguish between those with legal personality (formal associations) and those with legal personality and tax beneficial status (formal associations with ANBI status). When an organisation operating as a formal association obtains ANBI status, it becomes subject to higher regulatory constraints.

4.4. Powers of Members in Available Legal Forms

This thesis argued that the type of legal regime and the legal forms available therein affect the adoption of formal voting rights of members, and subsequently the use of these rights in practice. In this section, I will present the governing structure required for the available legal forms for non-profit membership organisations in the two countries, with focus on the presence or absence of explicit requirement for formal powers of members to attend the annual general meeting, and the power to control and elect the members of the executive body. Moreover, within the country sections we briefly discuss whether charity law in the UK and tax law in the Netherlands stipulate any rules on formal governing structure.

4.4.1. Legal Status of Members in the UK

The unincorporated association is a form which is not regulated by statutory law, and there is no defined internal governance structure prescribed for them (Synge 2017, 368; Steward QC 14.09.2018). Unincorporated organisations have flexibility and freedom to set their own internal structure (Steward QC 14.09.2018). The internal rules or the 'constitution' of the unincorporated association usually contains rules for establishment of management committee, define members rights and obligations and specify the governing control (Steward QC 2011, 17). There is no strict format for meetings and members can chose the format they prefer (Steward QC 2011, 8). The elected committee has fiduciary duties towards the association's members (Steward QC 2011, 113).

The company law regulates various matters of internal governance of companies limited by guarantee including meetings, voting, resolutions, appointment and removal of directors of the board (Synge 2017, 368). Yet, in comparison to the civil law tradition, regulation on legal personality in the UK does not regulate

internal structure in details and this is seen as a matter of choice for the founders (van der Ploeg 2009, 7). In order to incorporate as company limited by guarantee, organisations need to submit memorandum of association and articles of association as a governing document where the formal governing structure is defined (Companies Act 2006, part 2, 9 Registration documents). Under the 1985 law, companies were required to have minimum two members and at least one director, while under the 2006 Companies Act they must have one or more members and at least one director of the governing board (also known as the management board, management committee etc.). To amend the articles of the association, the organisation has to pass a special resolution at a general meeting supported by at least 75% of the companies' members (Thomson Reuters 2018).

Companies limited by guarantee are governed by a board of directors accountable to the members, however, "the directors are not necessarily voted in by the membership" (Smith and Teasdale 2012, 165).⁴⁹ In terms of governing structure, companies limited by guarantee can choose between two-tier structure where members can elect the directors and a single tier structure where the directors will be considered members of the company (i.e. the two roles are performed by the same people) (Governance Hub and Co-operatives, undated, 15). UK company law places the locus of authority with the board of directors and there is no requirement in the UK to include members on the board or include members in the process of appointing directors. There are model articles in the UK that allow for appointment by ordinary resolution or decision of directors. A company's own articles may also prescribe a different way of appointment of the directors. If there is no provision in the company's articles of association as to appointment, then by default the power of appointment rests in the members.

All companies were required to hold an annual general meeting under the 1985 Companies act and in case of non-compliance the company and its directors were liable to a fine (Meetings 366, Annual general meeting, Article 4). Under the 1989 Act it has been possible for companies to opt out of holding AGMs by passing an elective resolution (Company Law Club Undated). The Companies

⁴⁹ In fact, in the UK under both company and charity legal framework, organisations do not have to adopt a democratic decision-making structure (Smith and Teasdale 2012, 161).

Act 2006 introduced a change (Part 13 sec281 - sec361 in effect since October 2007) and currently private companies are not required to hold general meetings including annual general meetings (Governance Hub and Co-operatives, undated, 15). In practice, if companies were incorporated before 2006, their articles will require them to hold an AGM, and this would remain intact unless the companies amended their articles post 2006. Also, it is more likely in a company limited by guarantee rather than shares that its articles would require an AGM. In sum, company limited by guarantee is a flexible form that enables but does not legally require members to appoint the directors, and therefore in practice most organisations can opt out from democratic decision-making structure where wider membership attends at the annual general meeting and elects the members of the executive (Smith and Teasdale 2012, 165).

Charities are governed by appointed trustees, and even though they can adopt a governing document where members have right to elect trustees, they can operate without voting membership (Smith and Teasdale 2012, 161). Organisations are not required to hold annual general meetings by charity law and they have the freedom to specify who can attend and vote at the meetings (Charity Commission 2012). This means that legally speaking the law on charities does not stipulate any requirements for the governing structure in terms of members' powers. Some authors have noted that in common law countries characterised with charity-specific law, there is no concept of membership and their rights, and that there is a tension between pursuing a purpose for the public benefit (wider public) and the interests of members (Lansley 1996, 225). The distinction is rather between the trustees, who are members of governing bodies and the 'beneficiaries' which are users of charity (Locke et al. 2003). Despite these suggestions the Charity Commission has issued guidance (not mandatory in nature) for good governance practices of membership charities and there are calls for involving 'beneficiaries' in internal governance.

We can conclude that the UK represents a country where non-profit membership organisations operating in any of the legal forms available are not required by law to grant wider members with the right to attend the annual general meeting and formal voting rights to elect the board. They have the freedom to limit the decision-making rights to the members of the executive.

4.4.2. Legal Status of Members in the Netherlands

In the Netherlands, a formal association is established by a notarial deed drawn up by a Dutch public notary in Dutch language (Civil Code, Book 2, Legal persons Article 2:27). The notarial deed contains the articles of incorporation which define the method for convening the general meeting and appointment and dismissal of associations' directors (Book 2, Legal persons Article 2:27 Par 4.). The notary is responsible for producing a deed that would be in accordance with the law (Book 2, Legal persons Article 2:27 Par. 5). Both formal and informal association should be established by at least two persons (Article 2:26 Par. 2 Civil Code). The internal structure of the association is regulated by the Civil Code (Title 2 Book 2) and most of these rules are mandatory (Overes 2017, 469). Associations have two internal bodies – the general meeting of members and the board of directors (Articles 2:40 and 2:44 Civil Code). The board of directors is managing and representing the organisation while the general meeting of members has a mandatory competence to appoint and dismiss the members of the board (Overes 2017, 469; Russell 2018). The management board has competencies to make independent decisions for the advancement of associations' objects and existence of such body is mandatory (Burger et al. 2001, 26).

The members have rights to vote at the annual general meeting (van Veen 1997, 236). According to Burger et al. (2001, 26, see also van Veen 1997, 236) the most important rules in terms of internal governance of associations are those that provide the general meeting of members with mandatory powers:

“The law provides for the right to receive an annual report from the management board, to appoint and dismiss the members of the management board, to amend the articles, to wind up the association and to take decisions in all cases in which the law nor the articles give competence to other bodies of the association.”

In other words, the legal form of the association enables “democratic control of the management by the plenary meeting” (Brasz 1995, 23). The appointment of the board of directors is made by the general meeting of members, however there can be another procedure specified in the articles of association, “provided that each member is able to participate, either directly or indirectly, in the voting on the appointment of the Directors.” (Book 2, Article 2:37, Par. 2). There is a possibility for some of the members of the board, but not more than half to be

appointed by others than the members of the association (Book 2, Article 2:37, Par. 3). Moreover, the association may have a general meeting attended by delegates previously elected by and from the members (Book 2, Article 2:39). Each member must have the opportunity to participate in the election of delegates (Book 2, Article 2:39, Par. 1). This means that members have democratic rights and must be involved in the decision-making processes of associations (Brasz 1995, Russell 2018). The governing document can be amended only by a decision of the general meeting of members, once members receive a notice that such amendment will be proposed at the meeting (Article 2:42, Par.1).

To be recognised as an ANBI, the formal association submits a governing document to the tax authorities to show that it is a non-profit, and that it serves the public interest (Overes 2017, 479). There are no specific requirements regarding the governing structure of organisations acquiring ANBI status, except those related to constraints on the remuneration of managers, as well as the one stating that the members of the board that determine the organisation's policy cannot treat assets as personal assets (FATF/OECD and IMF 2011, 236).

In sum, the Netherlands represents a country where a specific legal form designed for membership non-profits is available. This means that organisations operating as associations grant members the right to control the executive body, attend the annual meeting of members, and directly or indirectly elect the executive organ. Organisations operating in countries like the Netherlands, where the regulation specifically mandates adoption of democratic structure are more likely to achieve formal representation of members i.e. elect their representatives in the executive organ. Also, the meeting of members has the right to amend the governing document. There are no legally mandatory rights for members to decide on programmatic priorities, but members can decide on all other matters for which other bodies have no competencies as per the governing document.

4.4.3. Comparative Assessment of Legal Forms for Non-Profit Membership Organisations in the UK and the Netherlands

The UK and the Netherlands are representative of different traditions of non-profit law and differently regulate the internal governance of legal persons. In the UK,

company law does not require the wider membership to elect the board (it's optional), hence companies do not have to hold an annual general meeting and board directors can be defined as the members of the organisation. On the other hand, the Dutch Civic Code provides mandatory rules for the control of the meeting of members over the executive body as well as members rights to appoint the board (directly or indirectly through delegates). Unincorporated associations in the UK, same as companies limited by guarantee have the freedom to adopt any governing structure, and theoretically they can limit the formal voting rights to the members of the board.

Table 6: Members Powers in Legal Forms Available for Non-Profit Membership Organisations

	Legal forms	Mandatory powers for members
UK	<ul style="list-style-type: none"> • Company limited by guarantee • Unincorporated associations 	No
Netherlands	<ul style="list-style-type: none"> • Association (Vereniging) 	Yes

In the UK, charity law places governance responsibility in the executive board (the trustees) which might encourage adoption of centralised decision-making. Legally speaking, it enables the leadership to decide whether they want to operate with voting or non-voting membership. In the Netherlands, tax law regulating ANBI status does not stipulate requirements related to their governing structure. In light of the legal regulation presented above, the expectation is that non-profit membership organisations operating like companies limited by guarantee (with or without charity status) and unincorporated associations are more likely to exclude ordinary members from election of the board. The organisations operating as formal associations in the Netherlands are more likely to have formal voting rights for the wider membership.

4.5. Maintaining Legal Personality and Tax Beneficial Status

In each of the two regulatory regimes analysed there are up to three configurations of indirect benefits which differ in the type and intensity of regulatory constraints (i.e. reporting requirements) they are exposed to. In this chapter we have already identified the configurations of indirect benefits in the

two countries. Building on that, in this section, I will firstly present an overview of regulatory constraints in the UK for the different configurations, as stipulated in charities and companies' law since 1980 and captured by the analytical tool introduced earlier. Secondly, I will present the regulatory constraints related to maintaining indirect benefits for different configurations in the Netherlands.

4.5.1. Reporting Requirements and Supervision of Non-Profits in the UK

In the UK organisations are exposed to overall higher reporting requirements and strict external supervision (particularly charitable companies). In terms of maintaining indirect benefits, companies limited by guarantee are less constrained than charitable companies, which, as mentioned earlier, are highly regulated and subject to both company and charity law (Piper et al. 2018). Unincorporated associations (no indirect benefits) are the least constrained configuration.

Companies limited by guarantees (configuration with one type of indirect benefit e.g. legal personality) in the UK have to comply with the nine requirements coded and this has remained the same since 1980. They need to provide updates on organisational changes and if any of the company details change (e.g. address or directors) the company has to report this to the Companies House and in some cases to the tax office (UK Government 19.04.2016). Moreover, organisations in the UK have to make regular reports on non-financial matters to the Companies House. More precisely, they need to submit annual return which provides information about the company and its activities (Companies House GP2 June 2016). The annual return is published by the Companies House. Finally, companies limited by guarantee are required to submit regular financial matters (annual accounts) on annual level, which are also made publicly available through the Companies House Register. The directors' report and accounts are submitted to the Companies House within nine months after the accounting period (Synge 2017, 374).

In terms of financial reporting, in the UK, the organisation has to file financial accounts to both the Companies House and the Her Majesty's Revenue and

Customs (UK Government 30.06.2016).⁵⁰ Requirements for keeping records and accounting are complex and organisations are recommended to hire an accountant (UK Government 30.06.2016). The annual filings depend on the size of the company (Budding 2013). Small company, in terms of budget size, can choose to disclose less information than medium and large companies, and the rules for small companies accounting regime are set in Parts 15 and 16 of the Companies Act 2006 (Companies House 2018). Small company accounts generally include a full balance sheet, profit and loss account, a signed directors report and notes to the account to the Companies House (Companies House 2018). Small companies can qualify for audit exemption (Companies House, GP3 June 2016 v5). Micro companies prepare a balance sheet with reduced information. Micro companies may be exempted from filing directors' report, a profit and loss account and auditor report, however they are yet required to prepare them by law (Companies House 2018). Companies must prepare and submit the same set of accounts to the Companies House and to their members (Companies House 2018). Before 2016, companies had to prepare full accounts for its members and send abbreviated (shorter) version for the public record (Companies House 2018).

When it comes to supervision, companies limited by guarantee are overseen by the Companies House and HCMR (Piper et al. 2018). The Secretary of state has investigative powers which were set by the Companies Act 1985 (part XIV) and is authorised to order an investigation of a company, inspection of documentation, and access to premises on the groups of suspecting illegal activities (Synge 2017, 374). Companies officers can be prosecuted for failing to submit a company's annual documents on time (Companies House 2018). Moreover, there is a civil penalty for late filing of accounts (Companies House 2018).

Moving to charity regulation, the government has established constraining and complex accountability and oversight requirements for charities since the 1990s to be able to prepare organisations for increased engagement in social service provision (Cornforth 2003, 4-5). Furthermore, this accountability regime was set to prevent abuse of the extensive tax benefits for organisations and donors by

⁵⁰ Company tax returns must be completed every year and if directors receive salary, they have to file self-assessment tax return.

subjecting organisations to external scrutiny (Cornforth 2003, 4-5). Since charities serve the public interest, the state wants to assure and protect the public interest through enhanced accountability requirements. Legally speaking, the burden of compliance falls on the trustees or individuals responsible for the general management (Locke et al. 2003). Trustees are responsible for the “the ‘proper administration’ of the charity: they have a duty to ensure that money and other assets (endowments, donations, grants or income from fees and trading, etc.) are applied in the interests of the beneficiaries as set out in the charity’s objects.” (Locke et al. 2003, 60). Moreover, Harrow and Palmer (2003, 102) suggest that the financial role of charitable boards is inclusive of the following tasks: “[Trustees] must ensure that there are proper policies and procedures in place governing their financial responsibilities, notably their exercise of budgetary control in relation to expenditure, financial and physical assets, human resources costs, and income generation”. This means that boards of trustees need to be operated by persons with sufficient knowledge of charity law, financial and governance matters to be able to meet these responsibilities. To prevent misuse of tax beneficial status, since 2010, the tax authorities apply the ‘fit and proper persons’ test on persons involved in the management of the charity (National Audit Office 2013, 32; UK Government 27.06.2016; HMRC 03.05.2016). The tax authority can deny access to tax beneficial status in case the responsible persons do not pass the ‘fit and proper persons’ test.

For charitable companies (configuration with all indirect benefits), that are subject to both company and charity law, reporting to the Charity Commission is mandatory and extensive (see Bolleyer 2018, 257-258). In terms of maintaining tax beneficial status, organisations have to comply with all ten coded requirements. They have to submit regular updates on information including financial and non-financial reports on annual level. The reporting requirements vary for different charity types and income bands. Non-financial reporting to the Charity Commission has expanded since the 90s (Hyndman and McMahon 2010, 459). All charities registered with the Charity Commission are required to submit trustees annual report (Morgan and Fletcher 2013, 806-807). The Charities Act 2006 led to a new requirement for public benefit reporting in the trustees’ annual report, which applied to charities with income over £25 000 from 2008 onwards

(Breen 2013, 866). Public benefit reporting is key for charity accountability. Charities must submit annual return to the Charity Commission via an online system. All registered charities whose yearly income exceeds £10,000 must submit annual return.

In terms of financial reporting, charities were required to present charity accounts for the first time by the 1992 Charities Act and the 1993 Charities Act (Hyndman and McMahon 2010, 458; Morgan 2008, 9; Morgan and Fletcher 2013, 7). However, it was not until the implementation of the first mandatory 1995 SORP (based on the 1993 Charities Act) that charities had to comply with detailed requirements for accounting (Morgan 1999, 98-99). The 1995 regulations were mandatory for charities with income over £250,000 (Harrow and Palmer 2003, 100). The 2000 SORP introduced a new requirement for trustees to provide risk management statement which further strengthened the financial role of boards. According to Harrow and Palmer (2003, 100) the developments of accounting regulation for charities is a clear manifestation of “governmental intervention in strengthening the boards’ role as financial controller”. Importantly, the accounting requirements differ depending on the income category the organisation falls in and whether the charity is a company or not (Charity Commission 2016).

The differentiated reporting and accounting system were implemented since the Charities Act 1993 which set reduced requirements for smaller charities and this trend continued with subsequent charity legislation (Bolleyer 2018, 256). Charities Act 2006 and Companies Act 2006 synchronised the reporting requirements for smaller charitable companies, which in practice meant less administrative burden (Charity Commission 2013). Also, it simplified the rules for when a professional audit is required (Charity Commission 2013). In the past charitable companies were subject to a more complicated accounting and reporting requirements because of the “specific thresholds set out under company law which were quite different to those applying to non-company charities.” (Charity Commission 2013, 1). Despite these changes, charitable companies irrespective of size have to prepare accounts on accrual basis, which are more demanding type of accounts (Charity Commission 2016). The Charities (Accounts and Reports) Regulations 2008 simplified reporting for charities in the income band from £25,000 and £250,000 (Charity Commission 2013, 20-21).

Currently all registered charities whose gross yearly income exceeds £25,000 need to fill in annual return, trustees' annual report and accounts (Charity Commission 2016). There are detailed legal requirements on what kind of information the trustees' annual report should contain, which are set in The Charities (Accounts and Reports) Regulations 2008 (for details see Charity Commission 2016). Charities which are subject to statutory audit have to provide additional information, and larger charities which prepare accounts on accrual basis should satisfy specific requirements stipulated in the charities SORP (Charity Commission 2016). In 2015, external scrutiny of charities with income up to 1 million was simplified i.e. independent examination applied instead of professional audit (Charity Commission 2015; Garbett 2017). For charities whose gross income exceeds £250 000 the independent examiner has to qualify by being a member of approved professional organisation specified in the Charities Act (Garbett 2017).

It is important to stress that charities are the most constrained non-profit organisations in terms of their political activities in the UK (Dunn 2008, 54). Constraints on political campaigning and partisan activities have been a continuous characteristic of charity legislation in the UK. Charities are allowed to engage in clearly defined political activities which are non-partisan to the extent that these contribute to the advancement of their charitable purpose as defined in their governing document (Dunn 2008). The Charity Commission has been issuing guidance on political activities of charities since 1995 (the first guidance), where it interprets the charity law in regard to political activities (Dunn 2008, 59; an overview of guidelines/publications which concern political activity of charities is provided in Appendix A). According to the Charity Commission's guidance on campaigning and political activity by charities (CC9 2008, 12): "For any charity, political activity can only be a means of supporting or contributing to the achievement of its charitable purposes. It cannot be a charitable purpose in its own right, or the only means by which the charity pursues its objects." Since 2008 the rules under which organisations can engage in political activities are clearer because of the guidance on political activities of charities issued by the Charity Commission (Lang 2012). The charity trustees have the responsibility to assure that political activities are performed in an independent and balanced manner,

and solely for achievement of its charitable purpose. In practice, the real challenge for charities is to comply with both law on charities and law on elections which constraints charity campaigning. For the purpose of campaigning, charities might have to register with the Electoral Commission as a non-party campaigner and stay in line with the reporting requirements concerning joint campaigning, respecting campaign spending limits and reporting on donations (Charities and Campaigning 2014, 4). This puts additional burden and responsibilities in the hands of charity trustees.

In terms of supervision, charities are accountable to and overseen by the Charity Commission for England and Wales, which “has extensive investigatory and enforcement powers” (Dunn 2016, 22). The Commission is maintaining a register of charities (Dunn 2016, 22). The supervisory and investigative powers of the Charity Commission had increased since the 1992 Charities Act (Piper et al. 2018). The 1992 and 1993 Act extended the interventionist powers of the commissioners, so they could conduct inquiries and request documentation, amend charity purposes and constitutions, direct the application of the charity’s property, suspend a trustee or employee in case of mismanagement, appoint additional trustee and manager and they could disqualify persons that are convicted of offence involving dishonesty and bankrupts among other powers (Bloodgood and Tremblay-Boire 2010; Breen et al. 2009, 11; Morgan 1999, 110). As mentioned above, the charity acts required charities to report information to the commissioners (Palmer 1995, 273-274). The Commissioners’ decisions were binding and subject to review by the courts (O’Halloran et al. 2008, 152). The 2006 Charity Act further expanded the investigative powers of the Commission – it authorised the Commission to direct trustees and employees to take certain actions (e.g. on the use of property), to cancel the membership of trustees or employees in an organisation and to enter premises of charities to seize documents (O’Halloran 2008 et al., 152; Bloodgood and Tremblay-Boire 2010; Bolleyer 2018). Finally, the latest Charities (Protection and Social Investment) Act 2016 introduced new sanctioning powers of the Charity Commission. The Act “extended powers for directing the use of charity property and the removal of a trustee disqualified from office without opening an inquiry” and “create[d] a new

list of offences that automatically disqualify a person from being a charity trustee” (Bolleyer 2018, 259).

Non-profit membership organisations with all indirect benefits - maintaining legal personality and tax beneficial status - have been exposed to high reporting requirements and external supervision by the Charity Commission since early 1990s. The reporting requirements for companies limited by guarantee have remained the same in terms of intensity since the 90s. In terms of maintaining indirect benefits, the charitable companies (‘all indirect benefits’ configuration) are more constrained than the companies limited by guarantee (configuration with one indirect benefit), which are more constrained than unincorporated associations that, as mentioned earlier, are not subject to statutory regulation and reporting (Steward QC et al. 2011).

4.5.2. Reporting Requirements and Supervision in the Netherlands

In terms of maintaining indirect benefits, formal associations in the Netherlands are exposed to permissive reporting requirements and there is an absence of external supervision for this legal form. The results from the coding of requirements show that in comparison to the company limited by guarantee (legal form available) in the UK, associations in the Netherlands have to comply with lower number of reporting requirements - three out of nine.

In order to maintain its registration, incorporated associations in the Netherlands are legally required to inform the Chamber of Commerce about any changes in the details provided in the registration form within one week (Dutch Chamber of Commerce, 2015) and this information is publicly available. Importantly, associations in the Netherlands are not obliged to submit regular annual reports on non-financial matters.

In terms of financial reporting, smaller associations are not required to deposit their annual financial reports to the Chamber of Commerce and this requirement applies to big associations with registered companies with turnover of EUR 6.000.000, 00 during the last 2 years. The financial reports must be audited only in specific cases, and financial information is published only for big associations with sizeable commercial enterprise (Overes 2017, 472). Consequently, financial information from associations are not disclosed publicly by the Chamber of

Commerce except for large associations with companies (Budding 2013). Similar to the UK, large associations in the Netherlands are only required to have their financial statements audited by a registered accountant or an accountant-administration consultant (Book 2 Civil Code, Article 2:393).

The Dutch law is very limited when it comes to external supervision of associations and their activities (Burger et al. 2001, 27; Overes 2017, 475). The general assembly of members has a central supervisory role over the managing board (van Veen 1997, 236; van der Ploeg 2009, 14), and, as previously suggested, can dismiss board directors (Burger et al. 2001, 27). The directors have a responsibility for proper performance of tasks towards the association (Article 2:9, Par.1). According to the Dutch Civil Code (Article 2:48), the board of an association is primarily accountable to the general meeting (and not to an external statutory body) which approves the balance sheet and income and expenditure statement within six months after the end of the financial year (van Veen 1997, 236; Overes 2017, 472). While the board presents the annual account internally, it is not obliged to make this account public (Brasz 1995, 24). The General meeting receives the annual report describing the events of the past years and on the policy work of the board (Civil Code Article 2:48, para 1). In case the board fails to report within the required period, each member of the associations may file a legal claim in court against the board of directors (Civil Code Article 2:48, para 1; Burger et al. 2001, 27). When the association does not have a supervisory board and the annual accounts are not checked by an external accountant, the annual general meeting appoints at least two ordinary members (committee) to examine the documents and report its findings to the general meeting (Civil Code 2:48, para 2). This committee has the right to carry on an investigation and inspect the association's documentation, books and records (Civil Code 2:48, para 2).⁵¹

⁵¹ Non-profits that receive government funding report their annual accounts and report to the state agency issuing the funding and this is a way to compensate for the absence of external monitoring (Burger et al. 2001, 28). Also, organisations might be part of self-regulating initiatives such as the Central Bureau of Fundraising, and voluntarily adhere to greater public scrutiny (Burger et al. 2001, 28). Importantly, state funding bodies often ask for the adoption of participatory structure where participants have a say in matters of direct concern to them, as a condition for accessing state subsidies (van Veen 1997, 237).

Moving on to maintaining tax beneficial status, ANBIs in the Netherlands currently have to comply with eight out of ten coded requirements. However, before 2014, ANBIs had to comply with *five out of ten* requirements. Since 2014, there is an increase in transparency requirements and ANBIs are required to publish information on their website including basic organisational data (i.e. name, tax number, contact details), up-to-date policy plan, information on directors, financial statement, report of past activities and payment policy for directors and other staff (Russell 2018). They are required to report the website containing the required information to the Dutch tax authorities, which means that effectively they report to the public on financial and non-financial matters annually since 2014. The published financial information should contain the balance sheet, the profit and loss statement and an additional explanation (Dutch Tax Administration 01.01.2014).⁵² The ANBI status will be refused or withdrawn if a charity fails to publish the required information on the internet.⁵³ Organisations have to submit regular updates on organisational information such as changes in the address, remuneration costs, the objectives of the association etc.⁵⁴ The administration has to keep records on the exact remunerations per director, expenses, income and assets of the public benefit organisation (Russell 2018). To maintain ANBI status, organisations are not required to have externally audited reports and there are no constraints on political purpose. In fact, in the Netherlands, there are no constraints on political activities (Gilbert 2018, 8-9), and there is “no specific legislative framework governing the public policy or political activities” of non-profit organisations (Gilbert 2018, 9).

In terms of supervision, the Dutch Tax Authorities “execute continuous supervision on recognised charitable organisations with regards to the applicable criteria” (Russell 2018). The administrative and fundraising expenditure must be proportionate to the expenditure related to fulfilling the core purpose (Overes 2017, 479). In case an ANBI fails to meet the reporting requirements described

⁵² Tax and Customs Administration ‘Publishing the financial statement’ accessed at: https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/other_subjects/public_benefit_organisations/publishing-anbi-information-on-a-website/publishing_the_financial_statement on 28.09.2018

⁵³ Anbi.nl ‘Publication obligation’ accessed at <https://anbi.nl/publicatieverplichting/> on 28.09.2018

⁵⁴ Artikel 1a Uitvoeringsregeling Algemene wet inzake rijksbelastingen 1994 accessed at: <http://wetten.overheid.nl/jci1.3:c:BWBR0006736&hoofdstuk=1a&artikel=1a&z=2018-07-01&q=2018-07-01> on 02.10.2018

above, the tax authority can decide to withdraw the status (Overes 2017, 480; Russell 2018).

In summary, non-profit membership organisations maintaining legal personality in the Netherlands are exposed to lenient reporting requirements (three out of nine coded) and there is an absence of external supervision. ANBIs have to comply with more reporting requirements, and even though there is supervision in place, it is weaker than the supervision to which charities in the UK are exposed. The reporting requirements increased since 2014, and before that, the reporting regime was relatively permissive.

4.5.3. Comparative Analysis of Reporting Requirements and Supervision in the UK and Netherlands

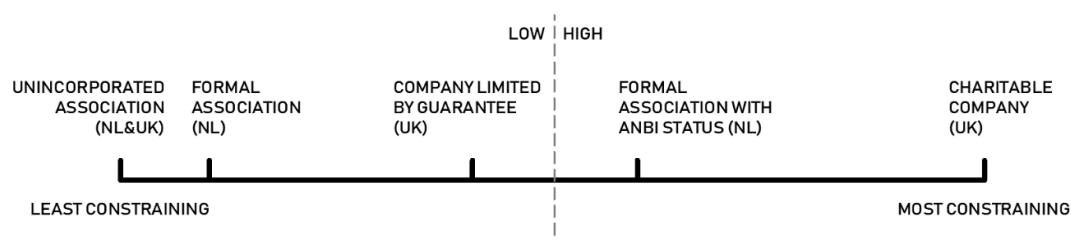
In conclusion, non-profit membership organisations in the UK are -overall- exposed to a higher number of reporting requirements for maintaining legal personality and tax benefits than organisations in the Netherlands (see Table 7 for a summary of scores). Non-profit membership organisations maintaining legal personality and particularly tax beneficial status in the UK since the 1980s have been exposed to higher reporting requirements and external supervision than organisations falling within the same configurations in the Netherlands. While the requirements for financial reporting of smaller charities relaxed in the UK over time, and requirements for Dutch ANBIs increased since 2014, overall UK charities are more constrained than ANBIs. While ANBIs in the Netherlands in the past few years have been exposed to higher reporting requirements, there are no additional constraints on political activities (Gilbert 2018, 8-9) and supervision of ANBIs is less strict. The constraints on political activities of charities invite for cautious and measured managerial approach.

Table 7: Summary of Reporting Requirements Related to Maintaining Indirect Benefits in the UK and the Netherlands

Country	Legal personality without beneficial tax status	Legal personality and tax beneficial status
UK (England and Wales)	Company limited by guarantee (9 coded requirements)	Charitable company (19 coded requirements)
Netherlands	Formal Association (3 coded requirements)	Formal association with ANBI status (11 coded requirements)

Based on the legal analysis we can conclude that charitable companies in the UK are the most constrained configuration, followed by ANBIs in the Netherlands, which in turn are followed by companies limited by guarantee. Formal associations are on the least constraining side, followed by informal associations and unincorporated associations being the least constrained configurations. Figure 3 presents the configurations in the two countries on a continuum from most constrained to least constrained. For analytical purposes we treat organisations without legal personality in the UK, and with legal personality in the UK and the Netherlands as being exposed to low regulatory constraints, while organisations with “all indirect benefits” in the UK and the Netherlands as being exposed to high regulatory constraints (see dividing line on Figure 3). The figure reflects the legal situation since 2014 until now. In terms of relative positions, before 2014, formal associations with ANBI status were on the left side of the dotted line i.e. were exposed to low regulatory constraints.

Figure 3: Configurations of Indirect Benefits in the UK and the Netherlands



Note: The figure visualises relative difference in terms of regulatory constraints between configurations and does not reflect numerical distance

The main theoretical expectation examined in the following chapters is that organisations which are exposed to higher regulatory constraints and external supervision are more likely to undergo board professionalisation than organisations which are exposed to lenient reporting requirements and little or no external supervision. In line with this, we can expect that charitable companies and ANBIs are more likely to undergo board professionalisation than organisations operating only with legal personality or no indirect benefits. However, the analysis takes into consideration the qualitative differences of the regulatory constraints to which ANBIs and charitable companies are exposed. While ANBIs in the Netherlands have been exposed to higher reporting requirements since 2014, supervision of ANBIs is less strict and there are no additional constraints on political activities such as those faced by charitable companies.

4.6. Conclusion

In this chapter I have presented the analysis of regulatory constraints in the UK and the Netherlands. The chapter first presented the legal non-profit frameworks in the two countries with the focus on the available legal forms for membership organisations and tax beneficial status. Then the chapter presents the differences in legal requirements for members to attend the annual general meeting and elect the members of the board. Finally, the chapter presents the analysis of the regulatory constraints i.e. the difference in intensity and character of requirements related to maintaining different indirect benefits in the two countries.

The first theoretical expectation of this thesis is that the type of legal regime and the legal forms available therein, affect the adoption of formal voting rights of members, and subsequently the use of these rights in practice. The regulatory analysis shows that in the UK adopting formal voting rights for the wider membership i.e. right to participate at an annual general meeting and elect the board in organisations operating in any legal form available is optional, while in the Netherlands the legal forms available for membership organisations grant special powers to the members to control and elect the board and attend the annual general meeting. Thus, the expectations for the organisational analysis are that non-profit membership organisations operating like companies limited by

guarantee (with or without charity status) and unincorporated associations in the UK are more likely to exclude ordinary members from election of the board, whilst organisations operating as formal associations in the Netherlands are more likely to have formal voting rights for the wider membership.

The second theoretical expectation of this thesis is based on the observation that in each regulatory regime there are up to three configurations of indirect benefits which differ in the type and intensity of regulatory constraints (i.e. reporting requirements). And that exposure to high regulatory constraints may lead to professionalisation of the board through external recruitment of professionals with skills for organisational maintenance. While the regulatory analysis shows that the British configurations are overall more constrained than their Dutch equivalents, it also confirms that reporting requirements and statutory supervision are higher and more constraining for organisations which have 'all indirect benefits' within the two countries, and organisations with only legal personality and 'no indirect benefits' are exposed to lower regulatory constraints. Based on the regulatory analysis, the expectations for the organisational analysis are that charitable companies and ANBIs are more likely to undergo board professionalisation than organisations operating only with legal personality or no indirect benefits.

5. The Impact of Non-Profit Regulation on Formal Voting Rights of Members

5.1. Introduction

The first expectation of this thesis is that the type of legal regime and the legal forms available therein, affect the adoption of formal voting rights of members in the governing documents. Formal voting rights encompass the rights of ordinary members to attend the annual general meeting and participate in decision-making through voting (Salamon and Flaherty 1996). The *Formal rights expectation* is that organisations operating in regimes where there are specific legal forms for membership organisations will have formal voting rights guaranteed in the governing document, whilst organisations operating in legal regimes providing legal forms which do not require formal voting rights for members will either not have them or limit their use in practice. In this chapter we will focus on the adoption and change of formal voting rights of non-profit membership organisations which operate in two different regulatory regimes for non-profits, UK being a common law, and the Netherlands being a civil law system. The use of formal voting rights in practice, as guaranteed in organisational rules, will be addressed in the next chapter.

Here the focus is on the implications of legal forms enshrined in company law and common law (i.e. the law of unincorporated associations) in the UK, and in line with the Civic Code in the Netherlands. The legal analysis showed that in both countries tax beneficial status - regulated by charity law in the UK and tax law in the Netherlands - is not directly relevant for the formal voting rights of members. Moreover, the legal analysis found that in the UK, company law does not require adoption of democratic structure (it is optional). Organisations operating as unincorporated associations are not subject to statutory law and required to have formal rules, but when they have, the members are free to agree to any rules, without constraints (Steward QC et al. 2011; Steward QC 14.09.2018). In contrast to the UK, in the Netherlands, the Civic Code provides mandatory powers to the annual members meeting to oversee the work of the executive and requires the inclusion (directly or indirectly through delegates) of

members in the appointment of members of the board. The law does not stipulate in what other areas members should be given voting rights in the Netherlands.

Based on the legal assessment, in the UK, we expect to find greater variety of formal governing structures with a tendency for centralised forms i.e. organisations without formal voting rights for members among membership organisations, whether they have legal personality or not. While company law prescribes some rules for internal governance, it leaves organisations with legal personality (companies limited by guarantee) to decide whether to have voting or non-voting members. Similarly, organisations without legal personality in the UK (unincorporated organisations) have flexibility and freedom to set their own internal structure and there is no defined internal governing structure for this form (Synge 2017; Steward QC 14.09.2018). In contrast, Dutch organisations with legal personality (formal associations and informal associations) are expected to grant formal voting rights for members, because within these legal forms members hold important organisational powers and there is more elaborate regulation for them in the Civil Code (van Veen 1997, 231).

The specific expectations assessed in this chapter are as follows: Organisations operating in the UK where legal forms do not require (i.e. regulate) voting rights for the wider membership are less likely to have such rights for members in their governing documents, meaning they will not involve ordinary members at the annual general meeting and in the election of the executive. Formal voting rights for members are more likely to be given by membership organisations which operate in the Netherlands where the law specifically mandates adoption of control powers of members over the executive i.e. right to attend at the annual general meeting and elect the executive board. To assess the expectations, ten organisations were selected, four organisations with legal personality and two without legal personality in the UK, and four organisations with legal personality in the Netherlands. As explained before, in the Netherlands organisations

operating as informal associations (with limited legal personality)⁵⁵ are small local clubs that do not fit the population of interests.

Table 8: Summary of Expectations on the Link Between Legal Form and Formal Voting Rights

Country	Organisation	Legal form	Theoretical expectations
UK	Songbird Survival	Company limited by guarantee	Organisations are less likely to guarantee formal voting rights for members ⁵⁶
	National Activity Providers Association	Company limited by guarantee	
	Surfers Against Sewage	Company limited by guarantee	
	Patient Information Forum	Company limited by guarantee	
	NHS Alliance	Unincorporated association	
	Hardy Orchid Society	Unincorporated association	
Netherlands	Vitiligo Netherlands	Formal association	Organisations are more likely to guarantee formal voting rights for members
	Young Friends of the Earth Netherlands	Formal association	
	National Association of Psychosocial Workers	Formal association	
	The Dutch Association for Dragonfly Studies	Formal association	

First, I present the analysis of the four organisations with legal personality and the two organisations without legal personality in the UK, and then I present the analysis of the four Dutch organisations with legal personality. The chapter concludes with comparative analysis of the patterns found and a discussion of the findings and its implications.

5.2. Organisations with Legal Personality in the UK

Based on the legal analysis in the previous chapter, organisations with legal personality in the UK are less likely to achieve formal representation because

⁵⁵ In the Netherlands, informal associations are formed without a notarial deed and have restricted legal personality (Overes 2017, 467), so there is no equivalent form to the unincorporated association in the UK.

⁵⁶ Here I refer to the general or wider class of members who joined the organisation and accepted its statutes, and not the members of the organisations that form the leadership.

company law does not explicitly require the board to be elected by the wider membership.

The findings below show that three (NAPA, SAS and PIF) out of the four organisations analysed with legal status in the UK grant formal voting rights upon incorporation to the wider membership and later in life limit the voting rights to members of the board (executive organ). The only exception is SBS, an organisation with formal rules that provide for democratic rights for the wider membership during its lifetime.

National Activity Providers Association

The National Activity Providers Association (NAPA), a charitable company working in the health and care sector, incorporated under the Companies Act 1985 and 1989 as company limited by guarantee in 1997. They primarily pursue the interest of their members. NAPA accessed legal personality promptly after formation when they were a small group of members – founders. They did not adopt a centralised decision-making structure upon incorporation. They drafted their governing document by using a model constitution for charitable companies designed by the Charity Commission (Certificate for Incorporation, 18th December 1997).⁵⁷ According to the first governing document, the organisation convenes an annual general meeting (Article 3). Quorum for any meeting is reached if ten members eligible to vote are present or one tenth of the total number of such members, whichever is greater (Certificate of Incorporation, Articles of Association, 1997, Article 7). Two members with voting rights or member(s) representative of one tenth of the membership at a minimum have the right to demand a vote upon a resolution (Article 13). Every paid member (individual and organisation) has one vote at a general meeting (Article 20 and 21) and in the statute there was no specification of the membership categories of the organisation.⁵⁸

⁵⁷ The model constitution suggests several alternative clauses, that the organisation chooses from depending on how they want to structure the work of the organisation. Organisations are advised to consult a solicitor if they want to include additional clauses (Certificate for Incorporation, 18th December 1997, 1).

⁵⁸ The document suggests the membership classifications may be specified in bylaws (Articles of Association December 1997, Article 61 (1), Companies House). The bylaws should be consistent

The articles refer to appointment and reappointment of trustees. The business of the charity should be managed by the trustees (Article 27), and their number should not be less than three while there is no specification of a maximum (Article 25). At every annual general meeting 1/3 of the longest serving trustees will retire by rotation (Article 29 and 30). A trustee is appointed or reappointed by recommendation from trustees or upon proposal of a voting member joined by a letter by the proposed candidate expressing willingness to become a trustee (Article 31:2). If there is no provision in the company's articles of association as to appointment, then by default the power of appointment rests in the members. This meant that NAPA had formal rights for wider members to elect the trustees.

In 2001 the organisation had 360 members⁵⁹ and total annual income of £79,646. By 2003, their membership doubled and reached over 600,⁶⁰ and their annual income increased to £188,658. In the period between 2001 and 2004 the organisation received funding from various private foundations and public sources. This led to the employment of professional staff. In 2001 the organisation obtained funding from the Growing with Age Project from the National Lottery Community Fund for which a National Project Manager was appointed in January 2002.⁶¹ The organisation also received grant funding through the Kensington and Chelsea and Westminster Health Authority and direct funding for administrator post by grant-aid from the Carnegie UK Trust.⁶² In the same year NAPA received grants from Lloyds TSB Foundation to cover the costs of employing a Chief Executive Officer, while Help the Aged contributed towards the cost of administration.⁶³ NAPA also reported that the Esmée Fairbairn Foundation has agreed to fund the services of a project worker in 2002.⁶⁴ With this funding, part time staff reached 4 in 2003, however, NAPA did not have full time administrative staff due to, as they report in the newsletter, lack of funding supporting the core work of the organisation.⁶⁵ The administrative work of the

with the memorandum and articles of association and can be altered or repealed at a general meeting (Article 61 (2)).

⁵⁹ NAPA Spring 2001 Volume 4 Issue 3, 2

⁶⁰ NAPA Summer/Autumn 2003 Volume 7 Issue 1, 1

⁶¹ Annual Report and Accounts, 31 December 2001, 3

⁶² Annual Report and Accounts, 31 December 2001, 3

⁶³ Annual Report and Accounts 2002, 3

⁶⁴ Annual Report and Accounts 2002, 8

⁶⁵ NAPA Spring 2003, Volume 6, Issue 3, 2

organisation, including membership administration and newsletter editing was still conducted by volunteers⁶⁶ and trustees in their voluntary capacity.⁶⁷ Finally, in 2004, NAPA received a grant from the Big Lottery Fund and three-year grant from the Department of Health (state funding), which enabled hiring of permanent staff posts.⁶⁸

In 2002, the organisation elected a new chairman, who was employee at the Royal National Institute for the Blind, a leading UK charity in the care sector.⁶⁹ In light of the increased membership, budget and staff, in 2004, NAPA's chair announced that they wanted to lower the number of people who are required to attend an AGM for it to be able to function.⁷⁰ NAPA consulted the Charity Commission whether ten people attending as opposed to 10% of members can be the new threshold for AGM attendance.⁷¹ The article was changed at an annual general meeting and the necessary quorum to convene an AGM was decreased:

"Ten persons entitled to vote upon the business to be transacted, each being a member or a duly authorised representative of a member organisation, shall constitute a quorum. If, for any reason, quorum cannot be achieved, the AGM shall be deferred by no less than one month, when it shall meet again. If, on this occasion, a quorum is not possible, the AGM will be deemed valid and can go ahead." (Special resolution, June 2004).

This means that they narrowed down the number of members that can attend the AGM for it to be able to convene. However, this does not mean limiting the rights of members to attend and vote and members formally still had voting rights. Members continued to enjoy formal voting rights until 2014.

It is important to note that since 2005, NAPA had a strategic director and a communication director.⁷² The Strategic Director post was focused on

⁶⁶ NAPA Spring 2003, Volume 6, Issue 3, 2

⁶⁷ Annual Report and Accounts 2003

⁶⁸ Our History section accessed at <http://www.napa-activities.com/about-us> on 11.04.2017; NAPA Spring 2005 Volume 9 Issue 1, 1-3; Annual Report and Accounts 2004

⁶⁹ NAPA Spring 2002 Volume 5 Issue 3, 1

⁷⁰ NAPA 2004, Volume 7 Issue 3, 2; Earlier, in 2000, NAPA made small changes in the quorum. They adopted Special resolution that the article 7 from the Articles of Association 1997 was deleted and replaced with an article specifying that quorum is achieved at any meeting if four members entitled to vote, or one tenth of the total number of members, whichever is greater attended the meeting (Special resolution, June 2000).

⁷¹ NAPA 2004, Volume 7 Issue 3, 2

⁷² NAPA Spring 2005 Volume 9 Issue 1, 1

cooperation and influence on external stakeholders (i.e. care providers, inspectorate, policy makers and other charities), while the communication director post was responsible for communication with members, media and provision of educational services.⁷³ In effect, the strategic director was the first paid CEO of the organisation who worked four days a week. Since 2007 the CEO became the spokesperson on behalf of the organisation informing members on organisational news,⁷⁴ which signalled shift in leadership. In newsletters up until 2007, the opening remarks were reserved for the chairman (voluntary position).

In 2014, the charity's paid management examined the issue of membership and voting rights and concluded that the constitution has not provided for decision making rights of ordinary members and that the trustees are the only members of the charitable company.⁷⁵ Until then trustees, were voted by the members at the annual general meeting (NAPA 30.05.2017). This conclusion resulted in a resolution being adopted by the trustees, for a formal amendment of the Memorandum of Understanding which defined serving trustees as members with voting rights and all the other members i.e. care homes, individuals and organisations that choose to uphold the values of NAPA were defined as 'subscribing members' with no voting rights.⁷⁶ The AGM currently involves only the trustees, since NAPA was "advised that Trustees were the only true 'members' in a legal sense".⁷⁷

There was a confusion about what the constitution enabled members to do according to one of the interviewees:

"And it really was not until [NAPA] made a major review of all the policy and procedures in 2014 that [NAPA] realised that wasn't an appropriate process, that technically those people were subscribers, not members and that the constitution have not given them any kind of format previously to have a voting rights largely because of that geography and although, [NAPA] had a perception that [NAPA] were holding an annual general meeting, technically it was not correct which is why [NAPA] then reviewed the memorandum of understanding and the trustees decided to change that in 2014, so the voting rights sat with them as members and everybody else was an associate or a subscriber if you like, who received services, but did not have the right to decide and vote on services." (NAPA 30.05.2017).

⁷³ NAPA Spring 2005 Volume 9 Issue 1, 1

⁷⁴ For example, see: NAPA Autumn 2007 Newsletter Volume 2, Issue 2

⁷⁵ NAPA 30.05.2017; E-mail correspondence 15.09.2018

⁷⁶ Minutes of Trustees Meeting 14 March 2014, Companies House

⁷⁷ NAPA E-mail correspondence 13.09.2018

The same interviewee describes this change as part of a bigger process of professionalisation:

“[...] I think one part of the professionalisation that took long time to achieve is recognizing the issue of members right and voting rights.” (NAPA 30.05.2017).

The revision of formal voting rights was proposed by a chief executive and supported by the trustees, so as of 2014 wider membership does not have formal voting rights i.e. cannot attend the annual general meeting, elect the members of the board, propose motions and vote on issues.

In terms of funding, the organisation in the period from 2005-2009 did not have funding from public sources⁷⁸ and all the grant support received was from private sources⁷⁹. They had some state funding as partners to a project led by Age UK in 2010-2015 and in 2013 they received a grant from the Department of Health to fund a Training and Development Officer in the organisation.⁸⁰ However, state funding was not the main source of finance at the time when the formal change took place, because after the economic recession, they aimed at generating their income independent of grant-funding bodies and private donors.⁸¹ In 2009 NAPA reported that their main source of funding are their members and that they generate 45% of their income in-house.⁸² During the 2000s they have increased their funding through provision of training. In 2003, they launched their first fully accredited training course designed specifically for activity providers,⁸³ and in 2015 they launched the Level 3 Certificate in Activity Provision in Social Care.⁸⁴

In 2013 NAPA experienced drop in the income from training activities as a consequence of the economic crisis and had to undertake staff cuts and move the office from central London to Amersham.⁸⁵ In addition to individual members,

⁷⁸ This includes national lottery funding and state funding

⁷⁹ Annual Report and Accounts 2009

⁸⁰ Financial report 2013, 19

⁸¹ NAPA Living Life, Winter 2009, 2; This was also confirmed by an interviewee who suggested that it was NAPA's strategic decision not to depend on grant funding from external bodies because it diverted the organisation from its core mission (NAPA 30.05.2017).

⁸² NAPA Living Life, Winter 2009, 2

⁸³ Annual Report and Accounts 2003

⁸⁴ Financial report 2015

⁸⁵ Director's report, Financial report 2013; While the membership size for 2013 and 2014 is not known, the membership size in 2012 was 3000 and in 2015 it was 2,980. The annual income dropped from £363,000 in 2013 to £265,275 in 2014. The 2014 financial report gives only the abbreviated accounts, which means that they worked with smaller annual income and the

in 2006 NAPA opened up the membership to corporate members (e.g. care homes),⁸⁶ and these organisational members were particularly hit by austerity cuts and in some cases could not afford to pay membership or training fees (NAPA 06.06.2017).⁸⁷ In the Financial Report from 2013, they reported cuts in staff numbers and two posts were made part-time. This means that the change in formal voting rights happened in the context of reduced financial and human resources in 2014.

In summary, NAPA had formal voting rights for members until 2014. The organisation upon incorporation adopted a governing structure with formal voting rights for members. The attendance quorum for AGMs decreased in 2004, which coincided with the organisation's access to state funding, increased staff and membership size. However, the organisation kept formal voting rights for members until 2014, when the chief executive reviewed members voting rights and the organisation changed the formal rules, so the trustees became formally members of the charity. NAPA, which operated in legal environment where legal forms do not require (i.e. regulate) voting rights for the wider membership, upon incorporation adopted formal voting rights for members, however, later in its lifetime limited these rights to the board members (trustees).

Surfers Against Sewage

SAS was founded in 1990 and accessed legal personality in 1994 under the Company Act 1985. Before accessing legal status, they did not have a written governing document, but they had clearly defined aims and principles of the organisation (SAS 26.05.2017). The membership of the organisation is predominantly composed of individuals, and they pursue the interests of both members and non-members – beach users, surfers, and citizens interested in

document was prepared in accordance with the Financial Reporting Standard for Smaller Entities effective April 2008.

⁸⁶ NAPA Summer 2006 Volume 10 Issue 2, 3; NAPA signed up care homes and care-homes groups as members to be able to avoid fluctuation of individual members who often left the care sector (NAPA 30.05.2017).

⁸⁷ Therefore, the organisation is looking at diversifying the membership to include members of families of people in care-homes and providers of care in private housing (NAPA 06.06.2017). In 2016 the organisation has both individual and corporate members: mixed membership of care homes, housing with care and day care settings, with a variety of membership strands, for qualified and new activity staff, service users and their families (Financial report 2016, 6).

protection of marine life and the coastline. In 2007 the first corporate member was signed up.⁸⁸ In the early days the organisation was led by a group of founding members without much formal governing rules:

“In the early days every monthly directors’ meeting was pretty much a party. SAS was pretty anarchic!” (Pipeline news summer/ autumn 2010 issue 81, 28).

The size of staff grew rapidly in the first years, paralleling the increase of membership and funding. In 1991 they had a membership of around 1000 members and two employees.⁸⁹ A chief executive (originally called General Secretary) was employed since 1990 (SAS 26.05.2017). By the time they accessed legal status in 1994, SAS already had a team of 8-9 employees (SAS 26.05.2017).⁹⁰ They did not have state funding in the period before and after incorporation, and their funding came mainly through membership fees, small sponsorships and merchandise income (Wheaton 2007, 269). In the mid-90s their budget was composed dominantly from membership fees and the sale of merchandise (SAS 26.05.2017). According to Wheaton (2007), the membership size in 1993 was 7,300 members and in 1994 reached 12,500, while Gibbs (1994) cited in Hassan (2003, 224) claimed that their membership reached 16,000 by 1994.

They were advised by an accountant to incorporate as company limited by guarantee in order to protect the founding members who were engaged in campaigning activities critical of the government and companies (SAS 26.05.2017). They also needed legal personality to be able to engage in trading activities (SAS 26.05.2017), since sales of merchandise was one of their main sources of income. Even though incorporation was a formality that did not affect the day-to-day running of the organisation, it led to the adoption of a formal governing structure (SAS 26.05.2017). The organisation adopted two tier

⁸⁸ Pipeline news issue 70 October 2007, 21; Interestingly, the bylaws accompanying the first governing document in 1994 membership was opened for both corporate and unincorporated organisations which paid the annual subscription (Article 1.1.).

⁸⁹ Pipeline news 1991, Number 3, 7

⁹⁰ Since their incorporation in 1994, they had to report to the Companies House, however, for the period 1995 -2011 only the abbreviated accounts were retrieved from the Companies House which do not provide the total expenditure and total income, staff spending or staff numbers. Some of the information on staff and membership size gathered for this period comes from newsletters and secondary sources. The periods around 1994 and 2012 are important for understanding the formal voting rights for members, and for these years there are sufficient sources for triangulation.

organisational structure with different membership categories – an “A” and “B” category (Articles of Association 1994, Article 3b). The Bylaws accompanying the first governing document in 1994, stipulated that the “A” members shall not be less than 7 (Article 3.1.) and they were “entitled to receive notice of and attend and vote at any General Meeting” (Article 3.2). In article 8a it is stipulated that “A” “B” Member of the Company shall not by reason of his or her membership be entitled to receive notice of or attend or vote at any General Meeting of the Company.”⁹¹ The B-members shall meet once a year only for the election and/or removal of A-members (Bylaws 1994, Article 4.2). The quorum for the B-members meeting is at least 25 members or other, if the Directors decide otherwise (Bylaws 1994, Article 4.4). The B-members can propose nominations or removals in advance of the meeting, and they will decide with a simple majority (Bylaws 1994, Article 4.5). They created the two categories of membership to prevent significant changes related to the mission of the organisation:

“A-members were the original founding members. And those A-members, if someone wanted to change the constitution or do anything like that, and that was there to block. So that was put in place, in case someone suddenly decide, so say, of all members, the B-members were the 18 000, and what we realised is that we need to have some protection about it. At our AGM, if 3000 members turned out from Brighton, and said that we are sacking you and we are going to move the whole thing to Brighton, they could not. So, any change in constitution, or the aim and objectives or any big change, had to be agreed by these A-members.” (SAS 26.05.2017).

The annual general meeting was then only attended by the A-members and they elected the Directors of the company. The Directors of the organisation did not retire by rotation and an appointment was made upon the recommendation of the Directors or a voting member that provided a notice for appointment of a person together with a confirmation by that person (Article 9c and 9d). This means that upon accessing legal personality, SAS adopted a representative structure where the wider members had a chance to elect delegates who then attended and voted at an AGM.

Formal voting rights for the paying members were retained until 2012, when the organisation accessed charitable status and changed its governing document, following a leadership change in 2008 and further increase of specialised staff. In

⁹¹ Articles of Association 1994 and Bylaws 1994 (Article 4.1), Companies House

2008, a new chief executive, who had a background in the environmental non-profit sector was employed (Siegle 2010).⁹² The organisation at that period was facing threat of closure (SAS 16.06.2017a). Under the new management SAS staff grew from three members in 2008⁹³ to nine members of staff in 2011 and 2012, the year when they accessed charity status.⁹⁴ The budget of the organisation reached £514 046 in 2012.⁹⁵ In that period they had diverse funding coming from private grant making foundations and trusts, donations, government agencies, membership fees and corporate sponsorship.⁹⁶ In terms of state funding, the Environmental Agency supported two of SAS's initiatives with total of £34,610, which was 6.7% of the total income,⁹⁷ meaning they were not dependent on state funding.⁹⁸

In 2012, SAS changed the governing document in accordance with the Companies Act 2006. The charitable status does not have requirements related to formal voting rights of members, as pointed out earlier. Nevertheless, registration with the Charity Commission was an opportunity to amend the governing document. The two categories of members defined in the 1994 articles were removed, and in the new Articles of Association (2012), members are defined as “those individuals whose names are recorded as company members in the Charity's statutory registers as at the date of adoption of these Articles, and other individuals admitted to membership of the Charity in accordance with the Articles” (Article 7). *The formal members are the Trustees of the charity* (Article 20). The article 20.1 on the appointment of trustees stipulated that “*The number of Trustees must always be the same as the number of Members*”.⁹⁹ This means that in line with company law, the trustees (members of the board) are members with formal voting rights who can attend the annual general meeting. According

⁹² Pipe Line news issue 74 winter 2008, 3; The position of the Chief Executive was newly created, however SAS in practice had someone in charge of general management since the early 1990s.

⁹³ The Exeter Lectures: Hugo Tagholm, Chief Executive, SAS, May 2016

⁹⁴ Accounts and report 2012

⁹⁵ Accounts and report 2012

⁹⁶ Accounts and report 2012, Companies House

⁹⁷ Accounts and report 2012, 45

⁹⁸ The 2013, 2014 and 2015 Accounts and reports, SAS reported financial support by the Environment Agency. In 2015, the Environmental Agency supported the following project: <http://www.cleanercoastalcatchments.org.uk/frequently-asked-questions/>

⁹⁹ Articles of Association passed on 11.12.2011

to the latest Articles of Association (11.12.2011), the Board of trustees may call the General meetings or at least 90% of the members entitled to vote (Article 11). The quorum for the meetings was set on four members (Article 12), and voting can be done in person or via proxy (Article 15-17). The trustees are managing the charity in a voluntary capacity, enjoy extensive decision-making rights and are responsible for the financial management and accountability of the charitable company in accordance with Charity Act 1993.¹⁰⁰ Members defined in this way have the right to pass written resolutions if signed by sufficient number of members (Article 18). The broader membership reported by the charity does not have the right to attend the annual general meeting and elect the members of the board. According to one of the interviewees who was involved with SAS during that period, the change of the governing structure was due to the fact that it was not feasible to have direct voting rights for all the paying members:

“If you were to convene an annual general meeting [...] you normally need about two thirds of your membership. Now if SAS was having to convene a proper AGM for that to happen then we'd be talking about thousands of people if they had voting rights.” (SAS 16.06.2017).

In summary, SAS did not have formal governing document until 1994, when upon incorporation adopted a representative governing structure. In 2012, the trustees (members of the executive board) were defined as the only organisational members with formal voting rights. Accessing legal personality in 1994 happened in the context of increased funding, membership and staff size, so the leadership decided to adopt a two-tier membership system, to be able to protect their position within the organisation. In 2012, the professional leadership decided to adopt a centralised governing structure which does not grant paying members with formal voting rights. This happened at a time when the organisation did not have significant state funding, but funding from diverse funding sources and faced multiple pressures for accountability (Koppell 2005). In line with the expectations, SAS, operating in a legal system where legal forms do not require (i.e. regulate) voting rights for the wider membership, upon the initiative of the professional management, changed the governing structure of the organisation so the members of the executive can have exclusive formal voting rights.

¹⁰⁰ Article 39-40, Articles of Association passed on 11.12.2011; Accounts and Reports 2013 and 2014, Companies House

PIF was founded in 1997 and accessed legal status in 2008 in accordance with Companies Acts 1985 and 2006. The organisation was founded by a small group of patient information managers and professionals led by the need to share information and facilitate learning in the midst of changing health policy and increased importance of health information.¹⁰¹ The membership is composed by mixture of individuals and organisations including companies, small charities, researchers and freelance professionals involved in health information production. PIF primarily pursues the interests of its members. According to interview data, before incorporation the organisation did not have a governing document and it was governed by a board of non-executive directors (PIF 02.05.2017). However, a newsletter from 2002 (quarterly publication) shows that PIF invited members to the AGM, which was held together with the annual conference, indicating the existence of an internal democratic practice.

In the period around 2005 the organisation moved towards a smaller management group and employed first paid staff.¹⁰² This is the period when the organisation also accessed state grant from the Department of Health (PIF 02.05.2017). They applied for legal personality in 2008 to be able to give more credibility to the organisation (PIF 02.05.2017). The structure adopted in the governing document at the time of incorporation was democratic. The statute granted every member one vote at the Annual General Meeting (Articles of Association 2008). Interestingly the quorum for the annual general meeting was set very low and “two persons entitled to vote upon the business to be transacted, each being a Member or a proxy for a Member or a duly authorised representative of a corporation” constituted a quorum (Articles of association, 2008). Moreover, the articles of association stipulate that the company can hold an annual general meeting with one person in case that is the sole member of the company (Articles of Association 2008, Article 6, i and ii). The Directors of the Company are elected

¹⁰¹ History of The Patient Information Forum accessed at: <https://www.pifonline.org.uk/about-us/our-history/> on 31.08.2018

¹⁰² History of The Patient Information Forum accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018

by members at the general meeting. There is no maximum number of members of the board, while the minimum is one (Articles of Association 2008, Article 18).

In 2009, after incorporation PIF employed three members of staff, including an executive manager (PIF 31.05.2017). Moreover, in 2009, the organisation formed a Strategy Group responsible for the organisational development and Advisory group composed of members to assure representation of their interests and needs.¹⁰³ At an Extraordinary meeting held in December 2010, new articles of association were adopted, and the document stated that as of 1st of January 2011 the directors of PIF will invite the regional and country coordinators, and members of the Advisory and Strategy groups to join the company as members (Special Resolution 2011). In the articles there is no further specification of membership categories therefore, based on the document, it is difficult to conclude whether the organisation limited voting rights only to those persons who served as regional and country volunteers and sitting on the Advisory and Strategy groups. According to an interviewee who was involved in a leadership role in PIF, the wider membership did not attend the AGM, but the advisory group (PIF 02.05.2017). This is further supported by an interviewee who acted as a regional coordinator in the period after the changes and reported participation at AGMs, which were held during the annual conferences (PIF 31.05.2017).

The 2010 Articles of Association are the last formal governing document deposited at the Companies House.¹⁰⁴ This document extensively regulated the rights and obligations of company's directors (Part 3). In the section on Methods of appointing directors, it is stated that the director is appointed by an ordinary resolution (simple majority) or by a decision of the directors (Articles of Association 2010, Article 21). The quorum for holding a meeting remained two persons entitled to vote upon the business of the company (Article 35.1).

In 2012 the organisation was awarded a state grant of £175,000 by the Department of Health¹⁰⁵ for period of three years to develop new approaches to

¹⁰³ Accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018

¹⁰⁴ The Patient Information Forum Limited accessed at: <https://beta.companieshouse.gov.uk/company/06562222/filing-history?page=2> on 03.09.2018; PIF 02.05.2017

¹⁰⁵ Innovation, Excellence and Strategic Development Fund

consumer health information (PIF 04.06.2018).¹⁰⁶ According to one interviewee the three year grant provided more support for the core work of the organisations and increased offer for the members, while it placed the organisation on a “more professional footing” (PIF 04.06.2018). With the grant money they employed a services manager for the period 2013-2015.¹⁰⁷ In this context of increased responsibilities related to state funding, the leadership actively reviewed the governing structure of the organisation and debated over the legal form in which they should operate:

“[...] It was probably about 2012 I would say and we looked at lots of different forms of governance and we also at the same time looked at different structures for the organisation, so we looked whether we should become a registered charity, or community interest company and we looked at whether we felt we would be better funded if we chose one of those options, we looked at whether we should have a membership at all, we looked at whether we should make the membership free and try to get income from other sources. Cause if you make the membership free presumably you get a greater membership and that is more appealing for organisations who want to come on board with more money. So we looked at lots of different options and we got advise from other organisations, we got advise from the National Council for Voluntary Organisations, we kind of did as much as research that we could and then we ended up sticking with the membership and kind of similar structure but we decided not to get a charitable status cause we did not feel it would give us any particular benefit to doing so and it was going to be time-consuming [...]” (PIF 04.06.2018).

Furthermore, in 2013, PIF asked an external Task and Finish Group to review the governance of the organisation.¹⁰⁸ The Task and Finish Group recommended setting a procedure for election of an executive board as a central governing body.¹⁰⁹ The membership voting rights were looked at again during this process and it was decided that the wider membership will not be given voting rights (PIF 04.06.2018). The Advisory board absorbed the regional coordinators network in 2014,¹¹⁰ and since 2015 the AGM was not opened for the members of the Advisory group anymore (PIF 02.05.2017). The organisation holds separate

¹⁰⁶ PiF to build case for consumer info (11 April 2012) accessed at:

<https://www.digitalhealth.net/2012/04/pif-to-build-case-for-consumer-info/> on 01.05.2017

¹⁰⁷ Membership Services Manager Role description and person specification July 2014; In 2014, the organisation operated without a central office and the board directors and the staff were communicating via Skype, phone, email and met physically once a month.

¹⁰⁸ Accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018; PIF 04.06.2018

¹⁰⁹ Accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018; PIF 04.06.2018

¹¹⁰ Our History, accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018

meetings for the executive board and the Advisory group (PIF 21.05.2018). The decisions of the executive board are binding.

The managerial staff concluded that members in the Articles of Association are the directors of the company limited by guarantee and not the wider membership. The governing document from 2010 enabled such interpretation. This is confirmed by an interviewee who was involved with PIF at the time, and proposed that there was a terminology confusion and that the members referred to in the Articles of Association were the organisational members – the directors of the executive board and not the wider members (PIF 02.05.2017).

In summary, the case of PIF shows how company law in practice enables diverse interpretation of membership. There is limited evidence that until 2008 PIF had democratic structure, and this structure was formalised when they accessed legal personality. The organisation formally granted members with rights to attend the AGM and have formal voting rights. The quorum for convening an AGM was set low at not less than two members and that remained unchanged. In 2010, a year after the first operational director (professional manager) was hired, the organisation adopted a new governing document announcing that the members of the previously formed Strategy and Advisory groups and the regional and country coordinators will be invited to become members of the company. Even though this was the last formal governing document adopted, the organisation in 2015 *de facto* limited decision making to the members of the executive board. The change was facilitated by the leadership. In line with the expectations, PIF, which operated in legal environment where formal voting rights do not have to be granted to wider membership, upon the initiative of the professional management, *de facto* limited the formal voting rights to the members of the executive board.

Songbird Survival

SBS operates as a charitable company, and it is the only UK incorporated organisation under study where the wider membership has formal voting rights. SBS was founded in 1996 and accessed legal personality in 2000 in accordance with the Companies Act 1985 and 1989. The organisation has not accessed state funding during its lifetime and mainly relied on funds from membership fees and

private donations.¹¹¹ The organisation primarily pursues interests of citizens interested in the protection of songbirds.

SBS did not have a governing document until it accessed legal personality in 2000 (SBS 26.03.2017). The governing document adopted in 2000 remains the same until today. When accessing legal personality in 2000 the organisation adopted a democratic governing structure. According to the Memorandum and Articles of Association, all members are entitled to attend the AGM and have one vote which may be given in person or by proxy.¹¹² Moreover, the document specified that the members elect the Trustees, appoint Patrons or honorary members such as Vice-presidents and decide upon any policy matter arising (Article 2.8.). More specifically:

“At an AGM the members [...] discuss and determine any issues of policy or deal with any other business put before them” (Article 2.8.7).

The quorum for the AGM is set on at least 10 or 10% of the members, whichever is greater (Article 2.2. Article of Association). The Council (executive organ) is composed of Vice-Chairman and elected members (Article 3.2). The directors are elected by the members during AGM,¹¹³ the members of the board for at least one year, and the Vice-chairman for the period of three years. Members of the charity may remove members of the Council by ordinary resolution (Article 3.10). One-third of the directors must retire at each general meeting.¹¹⁴ The candidates for the executive board are proposed by at least two members of the charity (Article 3.4). The total number may vary from seven to twenty-one individuals (Article 3.4) – all of whom should be members of SBS. The Council is accountable to the members for its work.

After accessing legal personality SBS did not have employed staff, and the trustees led the financial and administrative matters, publicity and events and membership responsibilities on a voluntary basis.¹¹⁵ In 2005, a new Policy Director was employed and part time staff to man the office.¹¹⁶ The part time

¹¹¹ SBS 26.03.2017; SBS 06.07.2018; Membership Leaflet 2015

¹¹² Certificate of Incorporation 2000, Companies House

¹¹³ Report of the directors (continued), Year to 30th September 2004, 3

¹¹⁴ Report of the directors (continued), Year to 30th September 2004, 3

¹¹⁵ Accounts and Reports 2004, Companies House

¹¹⁶ After incorporation and gaining charity status, the organisation was led by one of the founders on a voluntary basis, Keith Pulman in the role of Chief Executive of the charity until

policy director was “trying to implement trustees’ direction” by working one day a week (SBS 06.07.2018). In 2006, SBS merged with a Scottish charity Save our Songbirds¹¹⁷ because the aims of the organisations were identical. After this event, the membership size climbed at 1200 members and in 2007 the budget increased to £83253 from £55535 in 2006. In the period from 2005-2012 the organisation was effectively led by dedicated volunteers (the trustees) and supported by part-time staff (SBS 06.07.2018). The first executive director was employed in 2012.¹¹⁸ The establishment of the post of the full-time director was financially supported by a substantial private donation from a long-term donor of SBS.¹¹⁹

SBS for a long time was led by a voluntary board consisting of founding members and people who were brought on the board by existing members, and the main funding for the research projects and staff came through the connections and private funds of members (SBS 26.03.2017). The organisation has never received state funding.¹²⁰ This remained the same after the employment of the chief executive, and members continued to be a significant source of financing. This is confirmed by an interviewee, who when asked why SBS kept formal voting rights for members when legally they could limit them to the trustees, said the following:

“Because we are a membership organisation. Our funding comes from members, through sales of goods and pieces, charitable trust donations tend to be instigated by our members who may well be members of grant-making institutions or who have heard of us by word of mouth.” (SBS 06.07.2018).

This suggests that keeping formal voting rights for the wider membership is of financial interest to the organisation. Therefore, unlike the other cases where professional management has initiated change of the governing document, in SBS, we do not find this.

2004. In 2004 the headquarters of the charity were moved from Bristol to East Anglia. In 2005, SBS established its first office in Diss, which was related to the growing membership, according to the History section on the web site.

¹¹⁷ Account and reports, 2007, Companies House, 2; SBS 26.03.2017

¹¹⁸ History of SongBird Survival accessed at: <https://www.songbird-survival.org.uk/history> on 31.08.2018

¹¹⁹ Newsletter Autumn / Winter 2012 Edition, 1; Newsletter Spring / Summer 2013 Edition, 1

¹²⁰ SBS 06.07.2018; SBS 26.03.2017

In summary, SBS against the expectations retained formal voting rights for its membership during its lifetime. The fact that the organisation was led for most of its lifetime by the voluntary board mainly consisting of members, and members were significant source of funding, facilitated formal voting rights for them.

5.3. Organisations without Legal Personality in the UK

As explained in the legal chapter, the unincorporated association is a form which is not regulated by statutory law and there is no defined internal governing structure (Synge 2017, 368). The unincorporated association is a legal form that allows flexibility and privacy of operation (Warburton 1986). The governing structure is set in their rules, known as the 'constitution' and members of the unincorporated association are bound to each other by the terms of their mutual contract as laid down in the rules of the association (Steward QC et al. 2011, 4; Thomas 1997, 322). The expectation is that organisations which are not subject to statutory law, similarly as those which are subject to company law, are more likely to have members without voting rights. The analysis of the formal rules of the two unincorporated associations in the UK – The Hardy Orchid Society (HOS) and NHS Alliance shows that both organisations provide formal voting rights to their members.

Hardy Orchid Society

HOS was founded in 1993 and they are governed by a document adopted in 2005.¹²¹ The organisation was started by a group of citizens during a meeting at the Newbury Horticultural Show.¹²² HOS is a national organisation with individual direct members and pursues goals that primarily benefit members. The main sources of funding of HOS are membership fees. HOS has not had employed staff during its entire period of existence. According to the governing document all members can participate in the Annual General Meeting (Constitution 2005). Members have extensive decision-making rights according to the constitution. The annual general meeting elects the Officers (Chairman, Vice-Chairman,

¹²¹ In 2002 newsletter there is a mention of changing formal rules, which means there might have been an earlier governing document, which I could not access.

¹²² Chairman report 2007, accessed at:

<http://www.hardyorchidsociety.org.uk/HOS%201012/HOSweb5/AGMchair07.htm> on 14.09.2018

Secretary, Membership Secretary and Treasurer) which form the Committee (Constitution 2005). During the AGM, members receive the Chairman's Report of the Society's activities during the year, they adopt a statement of the Society's accounts for the preceding financial year, nominate an auditor and consider and approve rules proposed by the Committee (Constitution 2005). The Committee controls the Society's finances and administration and can appoint members on specific posts and define their duties (i.e. Meeting Secretary, Show Secretary, Journal Editor).

HOS does not own property and does not have employed staff. When asked why HOS did not access legal personality, an interviewee responded:

"Because [...] we don't have nature reserves, we don't have anything to maintain, you know it's like if you were RSPB for example, you've probably got 200 nature reserves and you've got staff that you pay, I mean we pay nobody, we have no salaries to pay, we have no real estate to look after, we have no offices, all we have is people, ordinary people, who are sharing an interest." (HOS 06.10.2017).

This means that the activities of the organisation did not require additional material, financial and human resources. Connected to that, the organisation is managed by its members who have retained formal voting rights as part of the formal structure. This in combination with the small organisational budget composed of membership fees and sales to members, accounts for the democratic decision-making structure of the organisation.

The NHS Alliance

The NHS Alliance, unlike HOS, is an influential national advocacy organisation that has been operating as an unincorporated association since 1997. The NHS Alliance dates back to early 90s when it was formed by a group of general practitioners called the National Association of Commissioning General Practitioners that were concerned with primary care.¹²³ NHS Alliance had a mixed membership composed of both organisations and individuals (NHS Alliance 23.06.2017) and primarily pursued the interests of its members. They were a representative professional organisation which had over 90% of Primary Care Trusts, a number of Health Authorities, and lots of primary care individuals as members which encompassed doctors, nurses, pharmacists, non-executive

¹²³ Speech, 10.12.2015; NHS Alliance 23.06.2017

directors and managers of health bodies (NHS Alliance 23.06.2017). The composition of membership broadened in 2013 to include “GP practices, primary care providers and individual clinicians, managers and patients”.¹²⁴

They adopted the constitution from the National Association of Commissioning GPs and amended it to permit working with the private sector, to be able to diversify their funding sources (NHS Alliance 23.06.2017). In terms of funding streams, during their lifetime, the income from members was around a third of the total income, the other sources of funding came from private sponsorships and state agencies such as the NHS and the Department of Health (NHS Alliance 23.06.2017). NHS Alliance had employed staff and received state funding from both grants and contracts during its existence (NHS Alliance 24.05.2017; NHS Alliance 31.05.2017).

At the beginning they had a member of staff who was employed in the National Association of Commissioning GPs who transferred to NHS Alliance (NHS Alliance 23.06.2017). A chief executive was employed on a part time basis in 1997 and by 2000 the organisation had nearly 10 paid staff members, several of which were contracted on a full-time basis (NHS Alliance 24.05.2017; NHS Alliance 23.06.2017). The chairman and the Chief Executive received honorarium for their work, while the other members of the National Executive (equivalent to executive board) were engaged on a voluntary basis (NHS Alliance 24.05.2017). All the people who acted as chief executive came from within the membership of the NHS Alliance.

The members of the national executive established a subsidiary company limited by shares called Primary Care Alliance in 1998¹²⁵ to be able to engage in trading activities (i.e. Conferences) and receive external funding, while the directors were protected with limited liability.¹²⁶ According to an interviewee:

“One of the things we did do by the way, in order to satisfy some other requirements that we had about liabilities and VAT registration, was to establish a Private Limited Company as a wholly owned subsidiary, if you like, of the NHS

¹²⁴ Chairman’s New Year Message 2013 January 2, 2013, Dr Michael Dixon

¹²⁵ The Primary Care Alliance Limited accessed at: <https://beta.companieshouse.gov.uk/company/03652706/filing-history?page=1> on 03.09.2018

¹²⁶ Email correspondence NHS Alliance 06.09.2017

Alliance which became its trading arm. And that was an incorporated body with formal directors etc.” (NHS Alliance 23.06.2017).

NHS Alliance is a shareholder and three of the non-executive directors of NHS Alliance are directors of the Primary Care Alliance.¹²⁷ The annual accounts submitted to the Companies House are abbreviated, therefore we cannot get a full picture of their financial situation over the years.¹²⁸ According to an interviewee who was engaged in the organisation from the beginning, the reason why the NHS Alliance did not incorporate as company limited by guarantee and did not access charitable status is that it wanted to be an organisation led by its members (NHS Alliance 23.06.2017). Both charity status and incorporation impose certain corporate structure that they wanted to avoid together with the costs for maintaining that structure (NHS Alliance 23.06.2017).

On the basis of the constitution of NHS Alliance from 2005, we can conclude that the organisation provided its members with formal voting rights. The members could attend the annual general meeting, where they elect the twelve members of the National Executive (Constitution 2005). The quorum for the National General Meeting is 20 voting members or 10% of voting members to be present, whichever is smaller (Article 7). The National Executive is responsible for implementing the policies of the association and they produce a report to be presented at the annual general meeting about their activities (Constitution 2005). Moreover, the treasurer is responsible for ensuring that the annual accounts and statement is presented to the members at the AGM (Constitution 2005).

There were several membership categories corresponding to different payment levels. The Primary Care organisations including professional executive committees (PECs), practices and individual members had the right to be notified about national meetings, right to propose motions and vote if present at national general meetings.¹²⁹

¹²⁷ Email correspondence NHS Alliance 06.09.2017

¹²⁸ See annual accounts submitted to the Companies House 2000 -2018 accessed at: <https://beta.companieshouse.gov.uk/company/03652706/filing-history?page=1> on 03.09.2018; Also one of the interviewees suggested that the two entities accounted individually, and that NHS Alliance accounts were not in the public domain (NHS Alliance Email correspondence 27.06.2017).

¹²⁹ Report by the Executive Committee 2005/6

NHS Alliance slightly changed the constitution in 2016¹³⁰, however, none of the formal voting rights of members were changed. The members continue to elect the members of the executive as previously:

“There shall be a National Executive comprising of twelve members elected at the Annual General Meeting. The National Executive elected members shall be able to co-opt additional members to the EC. Co-opted members will not be able to vote at EC meetings.” (New NHS Alliance Constitution 13 July 2016)

Moreover, as previously, members could propose motions and decisions were made by a simple majority of the eligible voting members present at the meeting (Article 5).

The NHS Alliance grants formal voting rights to members. The organisation was an influential advocacy group representing professional interests of members, and to pursue its mission it accessed diverse funding sources, including state funding and had employed staff and part-time chief executive. To be able to do that they registered a trading arm of the unincorporated association. Throughout their existence, the Chief Executive was a contracted employee (NHS Alliance 24.05.2017) who came from within the membership and worked closely with the chairman and the elected executive.

In conclusion, HOS and NHS Alliance, even though having different aims and operating with different funding streams,¹³¹ membership types and human resources (NHS Alliance having professional management since 1997, while HOS did not have staff during their lifetime), have decided to maintain themselves as unincorporated associations to minimise costs related to external accountability. Their governing structures as laid down in their constitutions stipulate formal voting rights for members, which suggests that the leadership of the two organisations wanted to maintain a democratic governing structure.

5.4. Organisations with Legal Personality in the Netherlands

As presented in the legal analysis, in the Netherlands the Civic Code provides mandatory rules for attending an annual general meeting and the inclusion

¹³⁰ They changed the name of the organisation to the New NHS Alliance and also broadened the membership to include citizens and patients. The governing structure remained the same.

¹³¹ HOS is highly dependent on membership fees, NHS Alliance is not dependent on membership fees. Moreover, the NHS Alliance, after change of leadership in 2016, abolished the membership fees altogether.

(directly or indirectly through delegates) of members in the election of members of the board. The theoretical expectation is that organisations operating in countries like the Netherlands, where the regulation specifically mandates adoption of democratic structure upon accessing legal personality, are more likely to guarantee formal voting rights for members. In accordance with the expectations, the four organisations analysed here, upon incorporation, have adopted democratic structures with formal voting rights for members, and have preserved that structure during their lifetime.

Vitiligo Netherlands (Vitiligo.nl) was founded in 1990¹³² and was incorporated the same year by notarial deed under the name National Association of Vitiligo Patients (LVVP). Vitiligo.nl pursues the interests of its members, patients with vitiligo and their families. The organisation initially served as a self-help group where patients share information and experiences with the disease, however following a leadership change in 2009 they adopted an advocacy-oriented mission.¹³³ The main source of funding for the organisation in the beginning were the membership fees, however, later on, the organisation accessed state subsidy from the Ministry of Health, Welfare and Sport.¹³⁴ Despite having annual access to state subsidy Vitiligo.nl relied only on volunteers and did not employ any staff during its existence.¹³⁵

The original statutes of the organisation adopted when accessing legal personality did not undergo changes in terms of members' rights.¹³⁶ In 2017 the organisation changed its name to Vitiligo.nl to be more recognizable, and the statute was amended for that reason.¹³⁷ The only article that changed was the term of members of the board from 8 years to unlimited in 2011.¹³⁸ This followed

¹³² One interviewee suggested that the organisation was formed in 1989.

¹³³ Newsletter 2011, Newsletter May 2010 page 3, Vitiligo.nl 14.10.2017

¹³⁴ State subsidy was reported in the newsletters i.e. Newsletter November 2006; Newsletter August 2008, Newsletter August 2009, 4; Newsletter August 2010; Newsletter August 2011, 2, Financial Statement 2016; The subsidy was allocated by the PGO Foundation, which falls under the Service for Subsidies to Institutions (DUS-I). This foundation executes the subsidy scheme on behalf of the Minister of Health, Welfare and Sport.

¹³⁵ Vitiligo.nl 14.10.2017; Vitiligo.nl 16.10.2017

¹³⁶ E-mail correspondence on 10.24 and 10.26.2017

¹³⁷ I had access to the 2017 statute which according to interviewee Vitiligo.nl 16.10.2017 was the same in content like the first statute when it comes to governing structure.

¹³⁸ E-mail correspondence on 10.24 and 10.26.2017

the change of leadership and board professionalisation (see Chapter seven), and can be interpreted as a formal attempt to centralise the decision-making.

In accordance with the requirements in the Civic Code, Vitiligo.nl set a democratic structure for the association, where members attend the annual general meeting and can elect the members of the board (Statute 2017, Article 9). All members older than 16 years have the right to attend and vote at the AGM.¹³⁹ The general meeting can create and amend regulations and can implement changes in the statutes.¹⁴⁰ Ordinary members (paying members), extraordinary members (exempt from paying) and honorary members (recognised for outstanding services and exempt from paying) are all considered equal members (Statutes 2017). The AGM can determine the number of the members of the board and can suspend or terminate the post of members of the board (Statutes 2017). The general meeting can also dissolve the executive board.¹⁴¹

In line with expectations, Vitiligo.nl, being a formal association, has granted formal voting rights to the members. Formally speaking, the organisation did not change the formal voting rights of members, even though it received state subsidy over the years and after 2009 changed its mission towards advocacy. However, within the limits of the law, they extended the term of the members of the board to unlimited in 2011, and this can be considered an attempt to centralise the power in the board, despite the rights of wider members to oversee its work.

Young Friends of the Earth Netherlands (in Dutch: Jongeren Milieu Actief – JMA), is an environmental organisation founded in 1990. JMA accessed legal personality in 1991. The membership is composed from youth 16-28 years old and the organisation primarily pursues the interests of non-members. During the 90s the organisation was politically active and organised various advocacy campaigns alone and in collaboration with bigger environmental non-profits.¹⁴² JMA hired staff in the mid-90s when they had access to state subsidies, however around 1998 they had to cut the employed staff because of sharp and sudden

¹³⁹ Influence and control regulations 2012 [Invloed en zeggenschap]

¹⁴⁰ Influence and control regulations 2012 [Invloed en zeggenschap].

¹⁴¹ Influence and control regulations 2012 [Invloed en zeggenschap].

¹⁴² Newsletter 1996, Newsletter 1997 no.1, 7; Newsletter 1997 no.4, 20; Newsletter 1999 no.2, 17

cuts in subsidies (JMA 13.11.2017). Therefore, in 1999 they started to receive financial support by Friends of the Earth Netherlands.¹⁴³ Since then they have operated as a separate legal entity under the patronage of Friends of the Earth which provided funding and administrative support to JMA.¹⁴⁴ There were four employees that worked on a project-basis until 2016 (JMA 23.10.2017).

JMA adopted democratic governing structure when accessing legal personality in 1991. There were several changes in the statutes in 1995, 2004, 2010 and 2014. After the change in 2010, the general meeting convened once a year and not twice as it was stipulated in the previous statute.¹⁴⁵ With the 2010 statutes the members were given the right to create a members' council to monitor the decisions of the board and the management (Article 15, Par. 4 and 5) and this remained the same in the 2014 statute. This right is given in line with the Civil Code (see previous chapter four). The annual general meeting is opened to all the members and members present at the meeting have one vote.¹⁴⁶ The annual general meeting is the highest authority in the organisation where members of the board are elected and proposals from members and the board are discussed and voted.¹⁴⁷ The annual general meeting can rule on any decision with a 50% +1 majority.¹⁴⁸ In the 2014 statute it is stipulated that any matters which are not decided by other organs as defined in the statutes will be decided by the AGM (Article 24). The members at the annual general meeting elect the board¹⁴⁹ and they can dismiss or suspend members of the board.¹⁵⁰

In line with expectations, JMA, being a formal association, has granted formal voting rights to the members upon becoming legal personality and this has remained the same throughout its existence. The organisation did not have a professional management and was mainly led by volunteers (executive board) and part-time staff. The reception of grant and state subsidy during the 90s and later the financial patronage by a bigger professional organisation did not result

¹⁴³ Newsletter 1999 No.2, 18; Newsletter 2003 No.1; JMA 13.11.2017

¹⁴⁴ House regulations [Huishoudelijke Reglement] 2014; JMA 13.11.2017; JMA 23.10.2017

¹⁴⁵ Resolution for the amendment of the statute 2010

¹⁴⁶ Statute 2010, Article 17; Statute 2014, Article 25

¹⁴⁷ Statute 2014, Article 24

¹⁴⁸ House regulations [Huishoudelijke Reglement] 2014

¹⁴⁹ Statute 2010, Article 11; Statute 2014 Article 17

¹⁵⁰ Statute 2010, Article 12; Statute 2014, Article 18

in changes of the governing structure which was shaped by the regulation on associations.

The Dutch Association for Dragonfly Studies (in Dutch: Nederlandse Vereniging voor Libellenstudie - NVL) was founded and accessed legal personality in 1997. The NVL was founded 1 March 1997 by the merger of Dutch Dragonfly Researchers ('Nederlandse Libellen Onderzoekers' - NLO), an organisation founded in the 1970s and the network of the Dragonfly Project of two youth associations for Nature Studies (NJN and JNM) which joined together in one association.¹⁵¹ The organisation decided to register as formal association because of the ability to open a bank account and have limited liability.¹⁵² NVL does not have a "high financial aim", and it mainly relies on membership fees and does not want to attract funding through private donations and legacies.¹⁵³

The mission of NVL is to bring together people in the Netherlands, interested in dragonfly fauna and research¹⁵⁴ and its members are citizens interested in dragonflies monitoring and conservation. The organisation does not undertake advocacy activities, but the data that volunteers produce are used for advocacy purposes by a partner organisation, the Butterfly Foundation.¹⁵⁵ They have received sponsorships from private foundations to support their events and the magazine,¹⁵⁶ however they have not been recipients of state subsidies.¹⁵⁷ The organisation has never had employed staff and has always been governed on a voluntary basis.¹⁵⁸ When asked why the organisation never hired anyone, one interviewee said that the aims of the organisation did not require additional human resources (NVL 27.09.2017).

¹⁵¹ 'The Dutch Association for Libelle Studies (NVL) celebrated its tenth birthday!' published on 30th of March 2007, <http://www.odonata.be/nieuws/107-2007-de-nederlandse-vereniging-voor-libellenstudie-nvl-vierde-haar-tiende-verjaardag> accessed on the 26.09.2017

¹⁵² Email correspondence with member of the board 27.10.2017

¹⁵³ NVL 06.10.2017

¹⁵⁴ Newsletter 1997, No.1

¹⁵⁵ Newsletter 1997, no.1; NVL 24.10.2017; Written answers from NVL board received on 26.10.2017

¹⁵⁶ Newsletter no.1 1997, Email correspondence October 8, 2017 with NVL board member; NVL 24.10.2017; NVL 27.09.2017.

¹⁵⁷ Email correspondence October 8, 2017 with NVL board member

¹⁵⁸ Written answers from NVL board received on 26.10.2017; NVL 06.10.2017; NVL 27.09.2017

The first governing document was adopted in 1997 and it has remained unchanged until today.¹⁵⁹ The association has adopted a democratic governing structure, in line with the Civil Code and members attend the annual general meeting and elect the board (Statutes 1997, Article 9). According to the statutes, the members can remove or suspend an individual from the executive board by 2/3 majority in the general meeting (Statutes 1997, Article 9). Furthermore, the members at the general meeting approve the financial accounts (Statutes 1997, Article 16).

NVL, as expected, upon incorporation adopted a governing document which guaranteed formal voting rights for members and this was not changed. They have been funded mainly through membership fees and led by voluntary board (there is absence of professional management), based on which we can expect that members also use their rights in practice.

The National Association of Psychosocial Workers (in Dutch: Landelijke Vereniging Psychosociaal Werkenden - LVPW), set their governing structure when they accessed legal personality in 1995 and the statutes remained unchanged throughout their existence (LVPW 10.10.2017). The organisation pursues the interests of its members, psychosocial care workers and has undertaken lobbying activities. The main sources of funding are the membership annual contributions.¹⁶⁰ They have one member of staff employed in the Secretariat since 2004 on a contractual basis.

LVPW, as expected, upon incorporation adopted a governing document which guaranteed formal voting rights for members and this has not changed. The members can attend the annual general meeting where they are informed about the board's activities and can vote on issues.¹⁶¹ The executive board consists of at least three persons who are appointed by the annual general meeting upon proposal from the members (Statutes 1995, Article 10). Additionally, the general

¹⁵⁹ NVL 06.10.2017; NVL 27.09.2017

¹⁶⁰ LVPW 10.10.2017; Statutes 1995.

¹⁶¹ Internal regulations [Huishoudelijke reglement]

meeting can decide upon complaints and appeals to decisions of the board.¹⁶² The general members meeting can amend and set new internal regulations (Statutes 1995).

In line with theoretical expectations, the four associations in the Netherlands where the law specifically mandates adoption of control powers of members over the executive i.e. right to attend the annual general meeting and elect the executive board, guarantee formal voting rights for members in their governing documents.

5.5. The Link between Legal Form and Membership Rights – A Comparative Assessment

This chapter has assessed the formal governing structures of organisations operating in different legal environments: one where the law on available legal forms does not regulate the adoption of formal voting rights for organisational members (the UK), and one where the law underwrites the control powers of members (the Netherlands). The *Formal rights expectation* was that organisations operating in regimes where there are specific legal forms for membership organisations will have formal voting rights guaranteed in the governing document, whilst organisations operating in legal regimes providing legal forms which do not require formal voting rights for members will either not have them or limit their use in practice. The specific expectation was that British organisations are more likely to adopt governing models which do not grant members formal voting rights or limit their use in practice, whilst Dutch organisations are more likely to grant formal voting rights to their members. For that purpose, I examined the formal rules and their evolution of four organisations with legal personality and two organisations without legal personality in the UK, and four organisations with legal personality in the Netherlands.¹⁶³ Table 9 summarizes the findings.

¹⁶² Internal regulations [Huishoudelijke reglement]

¹⁶³ In the Netherlands, I could not identify national organisations with similar size which operated without as informal associations, because registering legal personality is easy and only very small local clubs operate as in this form. Also, informal associations is a form available for membership organisations specifically.

Table 9: Summary of Empirical Findings on the Link Between Legal Form and Formal Voting Rights

Country	Organisation	Legal form	Theoretical expectations	Results
UK	Songbird Survival	Company limited by guarantee	Organisations are less likely to guarantee formal voting rights for members	Not confirmed
	National Activity Providers Association	Company limited by guarantee		Confirmed Change happened in 2014
	Surfers Against Sewage	Company limited by guarantee		Confirmed Change happened in 2012
	Patient Information Forum	Company limited by guarantee		Confirmed Change happened in 2015
	NHS Alliance	Unincorporated association		Not confirmed
	Hardy Orchid Society	Unincorporated association		Not confirmed
Netherlands	Vitiligo Netherlands	Formal association	Organisations are more likely to guarantee formal voting rights for members	Confirmed
	Young Friends of the Earth Netherlands	Formal association		Confirmed
	National Association of Psychosocial Workers	Formal association		Confirmed
	The Dutch Association for Dragonfly Studies	Formal association		Confirmed

The results, as summarised in Table 9 show a greater diversity of organisational structures in the UK in comparison to the Netherlands. Specifically, organisations with legal personality in the UK currently do not grant formal voting rights to their members, with the exception of Songbird Survival. Organisations without legal personality (i.e. unincorporated associations) in the UK grant formal voting rights to their members, against theoretical expectations. The findings in the UK do not suggest that the policy field is relevant for the kind of governing structure

organisations adopt, because both groups - organisations that confirm my expectations and those that confound my expectations - are environmental and health groups. The four organisations with legal personality in the Netherlands (i.e. formal associations) - irrespective of policy field, and in line with the theoretical expectation - grant formal voting rights to their members.

Three organisations with legal personality (NAPA, SAS and PIF) operate without formal voting rights at the moment, but upon incorporation have adopted a governing structure with formal voting rights for members. However, later on, these organisations limited formal voting rights to the members of the executive board. In all three cases there is evidence that these processes were initiated by professional management. Maintaining membership - unlike maintaining supporters - yields administrative costs of communication, organisation of meetings, maintaining up-to-date membership list, achieving a quorum for decision making etc. (Jordan and Maloney 2007). This, in combination with increased external accountability demands due to income from external sources (i.e. sponsorships, private donations, sales and state funding), has created incentives to limit the formal voting rights of members in these three cases. This is in line with studies that suggest that leaders will adapt an organisation's structure to increase the chances of the organisation's survival (Maloney 2015, 99). One important conclusion regarding the role of regulation is that the absence of regulated voting rights for members - i.e. organisations are given the option to define members of the board as the members of the organisations under company law – enables organisations to alter their governing structure. Or, in other words, the law on available legal forms for membership organisations does not prevent the leadership from limiting formal voting rights to the members of the executive board.

My analysis shows that both NAPA and SAS have changed their formal documents to reflect their centralised governing structure. This is not the case with PIF, where the decision to grant formal voting rights to the members of the executive board did not result in a change of formal rules because the framing of the formal rules allowed for such an interpretation. Unlike PIF, NAPA and SAS are registered as charitable companies with the Charity Commission of England and Wales. The Charity Commission is a particularly strict regulator, and may

intervene if members were to complain about an organisation's administration or were concerned about mismanagement, an example of which may involve "trustees [...] not acting in accordance with the provisions of the governing document."¹⁶⁴ In fact, cases seen by the commission often involve organisations which have not amended governing documents (i.e. functioning with inappropriate or unclear provisions) to match the charity's operations.¹⁶⁵ One example involves the commission's intervention in a charity where there was a confusion over the voting rights because the organisation did not have a clear formal definition of membership and lacked an updated membership list.¹⁶⁶ Failure to comply with the advice of the commission may result in opening a formal inquiry which is then published online. Hence, organisations which operate as charitable companies like NAPA and SAS are encouraged to align their governing documents with their governing practice.

The other three organisations in the UK, SBS (with legal personality) and NHS Alliance and HOS (without legal personality), against the expectation, granted and retained formal voting rights for their members throughout their lifetime. The three organisations are similar because they depend directly (membership fees) or indirectly (connections to private donors) on members for their funding. SBS and NHS Alliance - unlike HOS, which does not have employed staff - are led by voluntary boards that work closely with the professionalised management. HOS is a conservation society which is maintained by membership fees and a board led entirely by members-volunteers. It is run for the members and by the members, so there are no incentives to limit formal voting rights. SBS, from its foundation until 2012 was not led by a professional manager and largely relied on members and their contacts for funding. After the employment of a professional manager, members remained the main source of funding, and therefore there was an incentive to keep formal voting rights. The NHS Alliance has had a part-time paid chief executive throughout its existence. The chief executive is a contracted position and chief executives are recruited from within the membership and work closely with the chairman and the elected executive.

¹⁶⁴ Charity Commission for England and Wales (2004, 19); The document contains a range of examples on the intervention of the commission in matters related to proper administration of membership charities.

¹⁶⁵ Charity Commission for England and Wales (2004, 13).

¹⁶⁶ Charity Commission for England and Wales (2004, 8).

NHS Alliance relies on diverse sources of funding including private sponsorships, state funding and membership fees. In the case of NHS Alliance, an organisation with pronounced lobbying agenda and representing the direct interests of health professionals, the formal voting rights for members is seen as a way to signal legitimacy in front of stakeholders. Moreover, the active organisational membership attracted funding from private pharmaceutical companies and the NHS. The evidence suggests that organisations that are dependent on their members for funding and have leaders that see member participation as positive - even though operating in a legal environment where the leadership is free to adopt a centralised decision-making structure - will keep providing formal voting rights to members. This means that factors such as a dominant source of funding (Cordery and Sim 2017) and leadership choices (Moe 1980) are relevant for understanding the formal role of members in the six non-profit membership organisations in the UK.

Another relevant point for organisations that operate as unincorporated associations is that while they are free from 'hard' statutory constraints, the models of internal regulation for unincorporated associations offered by various legal experts are devised to match a democratic and participatory membership (see for example Warburton 1986, 110-116) suggesting the impact of 'soft law' on organisational governance. Another frequent issue with unincorporated associations is that when they adopt formal rules, they often do not specify a rule which permits the constitutional amendments, which makes altering the document difficult in practice (Steward QC 14.09.2018). In the absence of such a rule, based on contract law, the governing rules can be altered with consent by each member (Warburton 1986, 5), which in organisations with a sizeable membership is very difficult. Whilst the first reason could influence the initial adoption of formal voting rights in the two unincorporated organisations under study - NHS Alliance and HOS - the second reason cannot account for the retention of formal voting rights in their governing document, because the two organisations had specified rules for changing their constitution.

In the Netherlands, as expected, all four organisations have governing documents that guarantee formal voting rights for their members. Dutch organisations, even when they want to centralise their governing structure,

cannot limit the rights of the general meeting of members. For example, after its leadership changed, Vitiligo.nl's leaders ruled that members of the executive could spend an unlimited time on the board, but they could not change the governing powers of members. This suggests that, in contexts like the Netherlands, the non-profit law regulating the legal forms available for membership organisations has a constitutive function (Edelman and Suchman 1997, 479). This means that it shapes the governing structure of organisations with specific implications for the formal voting rights of members i.e. the right to attend the annual general meeting and to appoint members of the executive board. As suggested by van der Ploeg (2009, 3), legal form regulates the position of organisational actors within organisations. In the Netherlands, the law regulating associations, as in other democratic countries with civil law non-profit tradition (Freise and Hallmann 2014, 4) gives a central role to organisational members through the membership assembly that elects, controls and gives authority to the executive board. Hence, non-profit membership organisations that come into being in such a legal context have a strong predisposition for the rule-based participation of members (Lansley 1996), one of the core characteristics of membership-centred models of governance. This is important from a normative point of view, because the formal rights of members to control and elect the executive board, if used in practice, can provide avenues for the development of members' civic and political skills (Warren 2001; Dekker 2014), as well as strengthening the representational capacity of organisations (Guo and Musso 2007).

My findings suggest that non-profit membership organisations that operate in regulatory regimes similar to the UK will have higher diversity in their formal governance, while non-profit membership organisations operating in similar regulatory regimes to the Netherlands will have more uniform formal governing structures – granting a central organisational role to members. Does this mean that non-profit law regarding legal forms plays a constitutive function in both legal contexts? In the UK, the law operates more as a background factor, a context in which decisions over formal structure and the role of members are made by the leadership. In the Netherlands, the law on legal forms is a factor that directly shapes the role of members in the internal governance of non-profit membership

organisations. The lesson from this investigation is that the non-profit legal regime in which organisations are formed should be considered in future theorisation of the internal governance of non-profit membership organisations.

My analysis so far was limited to formal rules and their change. The main criticism of my study of formal governing structures is that these do not reflect the actual governance practice of the organisations (Cnaan 1991; Leardini et al. 2016). Therefore, to better understand the impact of legal regulation related to available legal forms on formal voting rights, I will turn to their use in practice. I will look at rule-based participation in organisations which guarantee formal voting rights in their governing document. Also, I will look at the use of voting rights in practice before organisations centralised their structure in order to better understand the context in which this change occurred.

6. Rule-based Participation: The Use of Formal Voting Rights by Members

6.1. Introduction

In this chapter, I examine rule-based participation of members, meaning the use of formal voting rights as enshrined in governing documents in practice. In accordance with the Rule-based participation expectation, I expect that organisations with formal voting rights stipulated in their governing document will provide opportunities for use of these rights in practice i.e. will have some level of rule-based participation. This means that stipulation of formal voting rights in the organisational statutes is a precondition for the existence of rule-based participation. In countries where legal regulation does not demand guarantees of key formal voting rights in organisational statutes, organisations can still stipulate such rights in their governing documents. For example, I have found such cases in the UK: SBS, HOS and the NHS Alliance. In countries where the law mandates the guarantee of formal voting rights in the governing document, organisations may also expand the members rights beyond what legal regulation demands. Often the right to participate at AGMs, the right to elect members of the board and the right to vote on programmatic issues go together in practice. Hence, rule-based participation is measured as the presence or absence of members' opportunities for: participation at AGMs, election of the executive and voting on programmatic priorities in practice.

In addition, this chapter also assesses the level of rule-based participation before the three UK organisations, PIF, NAPA and SAS, changed their voting structure. The chapter aims to explore the factors that led to the limitation of formal voting rights. The expectation is that these organisations had low level or absence of rule-based participation in the period before the change, despite having formal voting rights for members stipulated in their early governing documents. This enabled the leadership to truncate voting rights, which was legally possible, because in line with company law in the UK organisations can posit that members of the board are the only members of the organisation with formal voting rights.

Firstly, I will present findings on rule-based participation in the British and Dutch organisations which have formal voting rights stipulated in their governing

documents. Secondly, I will investigate the factors that led to the curtailment of formal voting rights for members in the British organisations, in order to understand what led to this change. The analysis focuses on the level of rule-based participation before the change, the role of leadership and the legal regime in which the organisations operate.

6.2. Rule-based Participation in Organisations which have Formal Voting Rights

In the following section I will present information on rule-based participation in British and Dutch organisations. The expectation is that in all seven cases, members will be invited to attend AGMs and are engaged in rule-based participation to some extent.

Table 10: Expectations on Rule-based Participation in Organisations with Voting Rights

Country	Organisation	Formal voting rights for members	Expectation
UK	Songbird Survival	Yes	Organisations that grant formal voting rights to members will have some level of rule-based participation by wider membership.
	NHS Alliance	Yes	
	Hardy Orchid Society	Yes	
Netherlands	Vitiligo Netherlands	Yes	
	Young Friends of the Earth Netherlands	Yes	
	National Association of Psychosocial Workers	Yes	
	The Dutch Association for Dragonfly Studies	Yes	

British Organisations

Songbird Survival (SBS), NHS Alliance and the Hardy Orchid Society (HOS) are three organisations in the UK that have formal voting rights for members. SBS is the only company limited by guarantee in the UK where members enjoy formal voting rights as stipulated in the governing document. In practice, evidence shows that members are given opportunities to attend the AGM and have the right to vote over programmatic issues throughout its existence.¹⁶⁷ Moreover, members have the opportunity to elect who sits on the executive board. While members do not suggest board candidates, they vote for proposed candidates during the AGM:

“So, the members could I suppose propose new trustees or members of the board but to my knowledge that has not happened. But at the AGM we would ask, we would vote within the trustees’ board to say who our trustees are, and they must be re-confirmed every two years I think, the positions, and then that goes to the membership who attend the AGM, or they can vote via proxy, which is a paper exercise. We send out proxy forms prior to the AGM and they fill-them all in. Quite often members will delegate the voting powers to the chairman of our board of trustees, so they will be tallied, and people confirmed in role or new trustees are elected in a position through that process. So that is the mechanism by which the membership can affect the make-up of the board of trustees.” (SBS 06.07.2018).

Members were also given actual opportunities to participate in the period after 2012, when the organisation hired a chief executive for the first time, with membership size ranging from 1600-1800¹⁶⁸. The members were invited to attend the AGM through the newsletter and e-mail (SBS 06.07.2018), and members who were not able to attend the AGM could influence decision-making through proxy voting:

“The time has now been resolved, and the meeting is in Rutland on 8th February. Members unable to attend personally may, of course, use their proxy vote which should be registered with the office by 6th February. Please remember that [...] you need to allow several extra days in the post.” (Annual general meeting report SBS Update Winter 2003/2004, 1).

However, only a limited number of members engage in rule-based participation:

“Out of 1800 members in total this year we had 15, last year we had 25. We never had lots of people come.” (SBS 26.03.2017)

¹⁶⁷ SBS Update Winter 2003/2004; Songbird Survival Spring / Summer 2014; Spring / Summer 2016 Newsletter, Song Bird Survival, 3; SBS 06.07.2018

¹⁶⁸ Account and reports 2012

According to another interviewee, members also use their right to send postal votes or use proxy voting, and in that way engage in authoritative decision making:

“So, we only have perhaps 20 or 30 members attend but we have a far larger proportion of people who will send in their thoughts on and delegated votes by paper, but I do not know that number.” (SBS 06.07.2018)

Considering that the board currently has 12 trustees, and employees also attend the AGM (SBS 26.03.2017), we can conclude that even though there are opportunities for rule-based participation, the exercise of these rights is low. Despite the low AGM attendance, we can conclude that SBS, being an organisation that has granted formal voting rights to members throughout its existence offers actual opportunities for members to engage in rule-based participation at the AGM.

Regrading HOS, an unincorporated association which grants formal voting rights to the wider membership, I found that members attend the AGM in great numbers and participate in voting over program and strategy. For example, members were invited through the newsletters to propose questions for discussion at the AGM:

“The next meeting, which includes our Spring Show and Annual General Meeting (May 10th, 1997 at Pershore) is creeping over the horizon. Consequently, the next issue of this newsletter will carry a copy of the Minutes of the last AGM and the Agenda for the next. If you wish to make any proposals for inclusion in the Agenda, please send them to me in writing, with your name and that of a seconder, by March 1st, 1997.” (The Hardy Orchid Society Newsletter No. 3, January 1997)

Members discussed and voted over organisational policy.¹⁶⁹ In one of the newsletters from 1998 it is reported that:

“At the brief EGM [Extraordinary General Meeting], held at the beginning of the meeting, the proposal that the Show rules would no longer constitute part of the Society rules was passed after some discussion. There were 2 votes against the proposal.” (The Hardy Orchid Society Newsletter No. 7 January 1998, 1).¹⁷⁰

Furthermore, the document analysis shows that the wider membership has elected members of the executive organ throughout the existence of HOS.¹⁷¹

¹⁶⁹ The Hardy Orchid Society Newsletter No. 24 April 2002, 3

¹⁷⁰ The meeting was attended by 65 members out of 200 paid members, as reported in the newsletter

¹⁷¹ Agenda of the Annual General Meeting of the Hardy Orchid Society at Kidlington, Oxford on Sunday, 10th April 2016; Minutes of the 20th Annual General Meeting of the Hardy Orchid Society at Exeter Hall, Kidlington, Oxford on Sunday 21st April 2013; Draft Minutes of the 15th

Members were also invited through the newsletters to propose nominations for available positions in the committee:¹⁷²

“Nominations have already been received for some of these posts but please do apply if you are interested. In the event of no nominations for an office being received, nominations shall be accepted from the floor.” (The Hardy Orchid Society Newsletter No. 24 April 2002, 4).

In the 90s, meetings were attended by around 50 members,¹⁷³ whilst during the 2000s and later, many of the HOS annual meetings were attended by around 100 members.¹⁷⁴ The latter was confirmed by an interviewee, who suggested that in the past years’ AGMs are attended by 100-150 members (HOS 06.10.2017). They combine the annual events (shows) with the AGM to be able to attract as many as members as possible.¹⁷⁵ Hence, we can conclude that HOS, as expected, throughout its existence has provided regular opportunities for members to engage in rule-based participation at AGMs, and high number of members use their formal voting rights.

The last organisation, NHS Alliance, which operates as an unincorporated association, as expected, also provides opportunities for rule-based participation and members participate in high numbers. The organisation invites members to attend AGMs and elect the National Executive Committee.¹⁷⁶ According to the interview data, members elected the members of the National Executive since the organisation was formed.¹⁷⁷ In the words of one of the interviewees:

“Members always have the right to attend the Annual General Meeting, members always have the right to propose motions to the Annual General Meeting as long as they were properly proposed and seconded in accordance with the constitution. And it was always the members who elected the National Executive.” (NHS Alliance 23.06.2017)

Annual General Meeting of the Hardy Orchid Society 2007; Chairman’s report 2008, accessed at: <http://www.hardyorchidsociety.org.uk/HOS%201012/HOSweb5/AGMchairman08.htm> on 14.09.2018

¹⁷² The Hardy Orchid Society Newsletter No. 12 April 1999, 2; The Hardy Orchid Society Newsletter No. 24 April 2002, 4

¹⁷³ The Hardy Orchid Society Newsletter No. 1 July 1996

¹⁷⁴ Newsletter No.29 July 2003 Report of the 11th AGM; Journal of the Hardy Orchid Society Vol. 2 No. 3 July 2005, HOS AGM and Spring Meeting; Chairman report 2007, accessed at: <http://www.hardyorchidsociety.org.uk/HOS%201012/HOSweb5/AGMchair07.htm> on 14.09.2018

¹⁷⁵ The Hardy Orchid Society Newsletter No. 1 July 1996; The Hardy Orchid Society Newsletter No. 3, January 1997; HOS 06.10.2017

¹⁷⁶ Notice of Annual General Meeting 2006 Accessed on 07 July 2018; Report by the Executive Committee 2005/6

¹⁷⁷ NHS Alliance 23.06.2017; NHS Alliance 31.05.2017

Membership participation at AGMs in the first 10 years fluctuated between 50 and 200 (NHS Alliance 23.06.2017). Like other organisations with formal voting rights for members, the NHS Alliance aligned the AGM with the annual conference and they:

“took advantage of the fact that there were between 600 and 1,000 people attending an annual conference of the NHS Alliance [which was opened to non-members as well] and held the Annual General Meeting during that.” (NHS Alliance 23.06.2017).

One of the interviewees suggested that the level of membership involvement was roughly the same throughout and for the AGM in 2017 they were expecting around 100 members (NHS Alliance 31.05.2017). They have recently created a manifesto for health care which was done with the involvement of members. The organisation has included members in decision-making over programmatic and policy matters throughout its existence to be able to demonstrate to the government that they represent the majority of the health authorities (NHS Alliance 23.06.2017). Thus, we can conclude that the NHS Alliance, as expected, offered opportunities for use of formal voting rights and had some level of rule-based participation by the wider membership.

Dutch Organisations

In this section, I will review the rule-based participation of the four Dutch organisations whose governing documents guarantee formal voting rights for members. Vitiligo.nl is the only Dutch organisation where members were given the opportunity to attend the AGM¹⁷⁸ and elect the members of the board¹⁷⁹ in accordance with the statute, but they do not use such rights in practice. More specifically:

“At the annual meeting [held] in April all the participants can vote regarding new board members. They get a presentation about last year results and next year plans. They do not vote regarding this, but can give their opinion.” (E-mail correspondence 19.09.2018).

Nevertheless, interviewees report that members do not engage in rule-based participation i.e. do not use the opportunity to attend the AGM and elect the board

¹⁷⁸ Vitiligo.nl Newsletter No. 1, May 2007; Newsletter May 2010, 3; E-mail correspondence 19.09.2018

¹⁷⁹ Newsletter May 2007; E-mail correspondence 19.09.2018

members.¹⁸⁰ In the past few years, only members of the board attend the AGMs (Vitiligo.nl 14.10.2017). When asked why members do not participate at the AGMs, one of the interviewees explains that the members of the organisation are vitiligo patients who join the organisation to receive information about advances in research on finding a cure for the disease:

“[...] they only want to know when there will be a solution for it, a medicine or something like that. That is not the case, but they hope that they will be the first one to get an information and most people join the organisation for that.” (Vitiligo.nl 16.10.2017).

They invite members to the AGM and inform them about their upcoming plans¹⁸¹ and decisions made by the executive board, however members are generally not responsive.¹⁸² This means that Vitiligo.nl, against the expectation that organisations with formal voting rights will generate some level of rule-based participation, the data indicates that members do not use the opportunity to influence organisational governance. Also, whilst members are given the opportunity to elect the members of the board they are not given the right to vote on programmatic priorities (plan of activities).

The members of the National Association of Psychosocial Workers (LVPW), an organisation representing the professional interests of psychosocial workers offers its members opportunities to engage in rule-based participation. LVPW invites members to participate at the annual general meeting and members receive the preparatory documents in advance (financial account, summary of past activities), including the program plan for the forthcoming year.¹⁸³ Members elect the members of the board during the annual meeting.¹⁸⁴ They also influence the programmatic activities of the organisation during the AGMs¹⁸⁵:

“[...] the members are annually asked, on the general meeting of members, what their opinion is about the plans of the board, the policy changes or new developments. Sometimes the members vote on proposals and other times the board will change the proposals according to the option heard on the meeting. Members can always make their own proposals and ask the members present what their opinion is over the suggested proposal.” (LVPWb E-mail correspondence 08.05.2018)

¹⁸⁰ Vitiligo.nl 14.10.2017, Vitiligo.nl 16.10.2017

¹⁸¹ Newsletter August 2006, 2

¹⁸² Newsletter May 2010, 3; Vitiligo.nl 14.10.2017

¹⁸³ LVPW 10.10.2017; LVPWb E-mail correspondence 08.05.2018

¹⁸⁴ Vitiligo.nl E-mail correspondence 15.05.2018

¹⁸⁵ LVPWa E-mail correspondence 08.05.2018

Despite that, the data indicates that members engage in small numbers. According to the one interview, on average, 40 out of 250 members attend the AGM (LVPW 10.10.2017). Nevertheless, this confirms the expectation that organisations like LVPW with formal voting rights for members experience some level of rule-based participation, they offer annual opportunities for members to attend the AGM, and not only elect the board but also vote on the programmatic priorities of the organisation.

Young Friends of the Earth Netherlands (JMA) also invites members to participate at the AGM. Interview and newsletter data suggests that throughout the whole existence of the organisation the wider membership was regularly informed about the AGM by email or multiple letters containing the invitation, agenda and the documents for the general meeting.¹⁸⁶ During the 90s, the AGM had to approve every new campaign and project.¹⁸⁷ At an AGM held in 1997 they discussed the upcoming campaigns and approved their budget.¹⁸⁸ During the AGM in 2003, the members discussed what to invest in, strategies for growth,¹⁸⁹ and decided that JMA would become the official youth organisation of Young Friends of the Earth Netherlands ['Milieudefensie'].¹⁹⁰ Members also made decisions regarding organisational policy and structure.¹⁹¹ The newsletter data also shows that members regularly appointed new members to the board.¹⁹²

More recently, interviewees suggest that the majority of the members are passive – they like to support the organisation and hear updates, but do not engage in rule-based participation.¹⁹³ One interviewee suggested that – in the last few years - around 30 members attend the AGM on average, not counting the employees and the board (JMA 13.11.2017). According to another interviewee, when they have actively asked for feedback on a strategic matter, the AGM was attended

¹⁸⁶ JMA 23.10.2017; JMA 08.11.2017; Members are invited to participate in the AGM in the 'Green Wave' magazine; see Newsletter No.1 1999; Newsletter May 2000

¹⁸⁷ Newsletter 1996 No.4, 14

¹⁸⁸ Newsletter 1997, No.4, 6

¹⁸⁹ Newsletter 2003 No.7

¹⁹⁰ Newsletter 2003 No.1

¹⁹¹ Newsletter 1999 No.1, 4; Newsletter AGM 2000 no.2

¹⁹² Newsletter 1998 No.1, 8; Newsletter 1999 no.1,4; Newsletter 2001 No.2; Newsletter 2003 No.7

¹⁹³ JMA 23.10.2017; JMA 08.11.2017

by 25 members (out of 600 members), which nowadays is considered high attendance (JMA 23.10.2017). As expected, JMA provides opportunities for rule-based participation, even though small numbers of members in practice elect the board and decide on the programmatic priorities of the organisation.

Finally, NVL, provides opportunities for rule-based participation, and members are engaged in high numbers. When asked how many people participated in the annual general meetings over time, the current executive board answered that, based on the meeting reports, there have always been between 60 and 100 members in attendance.¹⁹⁴ According to interview data, at the annual meeting - which is held in March-April every year- around 100-120 members would join.¹⁹⁵ At the annual meeting the board presents an overview of activities and results from the past year and their plans for next year (NVL 06.10.2017). The members of the board expect feedback from the members after which a central vote follows (NVL 06.10.2017). Members decide the strategic direction of the organisation:

“So, the members, they have a great vote in what direction the organisation is going and at these annual meetings, they can vote for new ideas, for new people to be members of the board and [...] they have great influence.” (NVL 27.09.2017).

Based on this we can conclude that NVL, being an organisation that grants formal voting rights to members, as expected, has wider membership which is engaged in rule-based participation.

In summary, as presented in Table 11, the evidence shows that organisations with formal voting rights in their governing document provide actual opportunities for members to attend the annual general meeting and experience some level of rule-based participation in practice. The only exception is Vitiligo.nl, where the wider membership does not engage in rule-based participation. The interviewees suggest that this is due to the type of membership, the organisation’s membership being mostly patients. This suggestion is in line with some previous suggestions in the literature that patient groups are “laggards” when it comes to internal democracy (Binderkrantz 2009, 670). The received wisdom is that when formal voting rights are required by law, voting becomes common and regularised in

¹⁹⁴ Written answers from NVL board received on 26.10.2017

¹⁹⁵ NVL 06.10.2017; NVL 27.09.2017

organisations that have to meet this legal requirement. However, according to my findings, patient organisations may be an exception to this ‘rule’.

Table 11: Empirical Findings on Rule-Based Participation in Organisations with Voting Rights

Country	Organisation	Formal voting rights for members	Expectation	Use of rights in practice
UK	Songbird Survival	Yes	Organisations that grant formal voting rights to members will have some level of rule-based participation by wider membership.	<i>Confirmed</i> Members participate in voting but in a small number
	NHS Alliance	Yes		<i>Confirmed</i> Members participate in voting in high number
	Hardy Orchid Society	Yes		<i>Confirmed</i> Members participate in voting in high number
Netherlands	Vitiligo Netherlands	Yes		<i>Not confirmed</i> Members do not vote
	Young Friends of the Earth Netherlands	Yes		<i>Confirmed</i> Members participate in voting but in a small number
	National Association of Psychosocial Workers	Yes		<i>Confirmed</i> Members participate in voting but in a small number
	The Dutch Association for Dragonfly Studies	Yes		<i>Confirmed</i> Members participate in voting in high number

Importantly, across all the organisations under study that experience some level of rule-based participation, members not only elect the executive board, but also participate in decision making regarding programmatic priorities. Besides SBS

which explicitly granted members with power to determine issues related to policy, the other organisations have regulated the right to propose and vote for motions without specifying the decision-making area i.e. programmatic priorities. The findings indicate that organisations, across the legal regimes, that provide actual opportunities for rule-based participation i.e. organise AGMs and hold board elections, simultaneously give members the possibility to vote for programmatic priorities.

6.3. Rule-based Participation before Organisations Lost Formal Voting Rights

In this section I evaluate the three British organisations that currently do not provide formal voting rights to their wider membership: National Activity Providers Association (NAPA), Surfers Against Sewage (SAS), and Patient Information Forum (PIF). The previous chapter found that both NAPA and SAS, have changed their formal documents and granted formal voting rights to members of the executive, whilst in the case of PIF, the decision to grant formal voting rights to the members of the executive board did not result in them changing their formal rules. PIF's governing document allowed for such interpretation. The aim in this section is to assess the level of rule-based participation before the organisations in question changed the voting structure, and the extent to which the legal regime in combination with other factors may account for the change. The expectation is that these organisations had low level or absence of rule-based participation in the period before the change, as well as leadership that wanted a more centralised decision-making structure. In accordance with company law, organisations may formally re-define or posit that members of the board are the only members of the organisation with exclusive voting rights.

NAPA, as the previous chapter showed, had formal voting rights for the wider membership until 2014. The analysis of available data found that members of NAPA had the opportunity to attend the AGM and exercise their formal voting rights in practice in the years after the organisation was formed. For example, in 1999, a year after accessing charitable status, the self-selected team of trustees resigned, and a new team was elected at the annual general meeting by

members.¹⁹⁶ The newsletter reminded the members that each year one third of the trustees step down and that trustees were elected.¹⁹⁷ Additionally, at the same meeting the trustees presented a report on the associations' progress, and members discussed and voted for approval of the report.¹⁹⁸ In 2005, when the first CEO was employed, NAPA still advertised the AGM in the newsletter.¹⁹⁹ To increase participation at the AGM, in 2006, NAPA held it as part of a Sharing Day in London, and all members attending were eligible to vote.²⁰⁰ According to a long-standing member of the organisation, before 2002 there were less opportunities to participate in the AGM (NAPA 06.06.2017). This changed later, when the organisation started holding the annual general meetings together with the annual conference which was often attended by 200 people. However, not many individual members were involved in decision-making through voting (NAPA 06.06.2017). Interview data suggests that before 2014, members had the opportunity to attend the annual general meetings and elect the members of the board (NAPA 30.05.2017). Members were also involved in decision making over programmatic priorities:

“[...] the wider membership was involved in constitutional requirements of the AGM e.g. proposing and seconding decisions including our strategic and spending plans and approving the Annual report and budget (NAPA E-mail correspondence 13.09.2018).

In the years before the formal change, the members who attended the annual conference - the context of which annual general meetings were held - were not significantly interested in rule-based participation.²⁰¹ The professional management reviewed the governing structure and proposed that the board of trustees should be defined as voting members of the organisations, whilst the rest of the members should be defined as supporters.²⁰² The minimum attendance for the AGM to convene was set at 10 members in 2004²⁰³, which equals the number of members that participated in enacting the resolution that defined trustees as organisational members.²⁰⁴ In line with expectations, before

¹⁹⁶ NAPA Newsletter Spring 1999, Volume 2 Issue 3

¹⁹⁷ NAPA Newsletter Spring 1999, Volume 2 Issue 3

¹⁹⁸ NAPA Newsletter Spring 1999, Volume 2 Issue 3

¹⁹⁹ NAPA Spring 2005 Volume 9 Issue 1, 1

²⁰⁰ NAPA Summer 2006 Volume 10 Issue 2, 5

²⁰¹ NAPA E-mail correspondence 13.09.2018

²⁰² NAPA 30.05.2017; E-mail correspondence 15.09.2018

²⁰³ Special resolution, June 2004

²⁰⁴ Minutes of Trustees Meeting 14 March 2014, Companies House

undergoing a formal rule change, NAPA had a passive membership and a leadership interested in instigating change. The legal form in which the organisation operates together with the low quorum for convening an AGM enabled the change of formal voting rights to occur.

Regarding SAS, which in 2012 limited formal voting rights to the executive board, I observed the same pattern. In May 1990, SAS was formed at a meeting organised by a group of concerned surfers and during this first meeting a provisional committee was elected for a period of six months, until the AGM was held.²⁰⁵ The first public meeting in which they enabled people to become members was attended by more than 150 people.²⁰⁶ In terms of rule-based participation at annual general meetings, until the adoption of the first governing document in 1994, the organisation regularly held AGMs where the wider membership had a chance to attend and elect the members of the executive Committee.²⁰⁷ Members were also presented with the latest financial and programmatic updates and they decided on funding matters such as “whether SAS should make donations or offer sponsorship to surfing teams entering competitions” and organisational policy such as employment of new staff members,²⁰⁸ establishing a regional network of representatives and similar questions:

“There was discussion on setting up regional committees and this was voted as a good idea with eventual input from all these to central SAS.” (Pipeline news 1991, Number 3, 7).

This indicates that members had the chance to influence the organisation’s governance.

SAS had a fast-growing membership in the period when they experienced rule-based participation. By October 1990, the membership of SAS was approaching 1000 members.²⁰⁹ The leadership (i.e. founders) wanted a participatory organisation. In 1991, they held the AGM a day after the annual ball of SAS, to

²⁰⁵ Pipeline news 1990, Number 2, 4

²⁰⁶ Pipeline news 1990, Number 1

²⁰⁷ SAS E-mail correspondence 18.09.2018; SAS 26.05.2017; Pipeline news 1991, Number 2, 1; Pipeline news 1991, Number 3, 7

²⁰⁸ Pipeline news 1991, Number 2, 1

²⁰⁹ Pipeline news 1990, Number 2, 4

enable members from other areas in the country to attend and elect the members of the committee.²¹⁰ Interview data confirms that SAS had an AGM every year in the early days and members could put themselves forward for election to the executive committee (SAS 26.05.2017).

After incorporation in 1994, when the organisation adopted a two-tier membership system, there were a “couple of hundred members” attending the annual general meeting and voting rights were opened to the members during the second half of the 90s.²¹¹ Specifically, as stipulated in the governing document, the wider membership was invited to attend the AGM and elected A-members (delegates). During the 2000s, members were still invited through the newsletter to attend the AGM.²¹²

However, by the late 2000s as the organisation was increasingly focused on their lobbying and advocacy activities, members were less involved in determining the programmatic priorities. Members were mobilised to support the lobbying agenda of the organisation through volunteering, supporting petitions, campaigns etc.²¹³ For example, SAS established a “Take action” section on their website where members could get information about their political activities and get involved:

“We have over 20 campaigns on the go at the moment so there’s a lot of help we need from you right now! Keep an eye on it, as it’s a key campaign tool for us in generating momentum on an issue.” (Pipe Line news issue 67, February 2007, 9)

In 2008, SAS started using the term ‘supporters’ rather than ‘members’ in their newsletters, signalling a different understanding of their role:

“Whatever way you choose to help us in 2008, whether it’s joining a demo or just keeping your membership up to date then that’s fine by us. All support is truly valued here and that’s what makes SAS supporters so special.” (Pipeline news issue 71, February 2008, 2).

This period overlaps with the change in SAS’s leadership, i.e. hiring a new chief executive. By the end of the 2000s, even though members were regularly informed about the activities of the organisation,²¹⁴ there is no evidence that opportunities for rule-based participation were in practice. This was confirmed by

²¹⁰ Pipeline news 1991, Number, 3, 7

²¹¹ SAS 26.05.2017; SAS Email correspondence 18.09.2018

²¹² Pipeline news, issue 58, October 2004, 20; Pipeline news, issue 64, May 2006, 19; Pipeline issue 68 May 2007, 22

²¹³ Pipe Line news issue 67, February 2007; Pipe Line news October 2007, Issue 70

²¹⁴ For example, the newsletters had a Membership news page (Pipe line issue 73, July 2008).

an interviewee who explained that even before changing the governing rules in 2012, members did not engage in authoritative decision-making through voting at the annual general meetings:

“Indeed, from a constitutional point of view, the members were actually the board of trustees, rather than the members. So, the constitutional framework set out that the trustees or the board of directors would take the decisions, and that remains the case to today.” (SAS 16.06.2017a).

As expected, in the period before SAS limited formal voting rights to members of the executive, members of the board, and not the wider membership, participated at the AGMs. Interviewed members also confirmed that they did not attend an AGM and they were not involved in electing members of the board or decision-making over the programmatic priorities of the organisation.²¹⁵ Similarly to NAPA, in the case of SAS we can note absence of rule-based participation and presence of an initiative for formal centralisation of the governing structure by the leadership. Both organisations operate as companies limited by guarantee, a legal form which enables such change.

In the case of PIF, we found that the decision to grant formal voting rights only to the members of the executive board in 2015 did not result in a change of formal rules, because the framing of their formal rules allowed for such interpretation. There is limited information on the governance of PIF before incorporation. Whilst interview data suggests that PIF did not have a governing document and it was governed by a board of non-executive directors (PIF 02.05.2017), a newsletter from 2002 indicates that PIF invited members to the AGM which was held together with the annual conference:

“I hope to see as many of you as possible at the AGM; we would like to hear your ideas for the future direction of PIF and for you to help us drive the work of the Forum forward.” (PIF Newsletter issue 3 April 2002, 1).

This indicates that members were engaged in rule-based participation.

As presented in the previous chapter, the first governing document of PIF was adopted in 2008 and then amended in 2010. Since 2010, the advisory group and the regional coordinators together with the board members were invited to

²¹⁵ SAS 16.06.2017b; SAS 23.06.2017; One of the interviewees has been a long-term member of the organisation, involved in the period before 2012 when the organisation changed the governing document.

participate at AGMs.²¹⁶ The network of Regional and Country Co-ordinators was absorbed into the Advisory Group in 2014.²¹⁷ In 2013, the leadership initiated a revision of the governing structure of PIF, and it was decided that the wider membership would not be given voting rights (PIF 04.06.2018). Even though this did not result in change of the governing document, since 2015 the AGM of PIF has not been open to the members of the advisory board anymore (PIF 02.05.2017). The executive board determines the programmatic priorities and plays a fundamental role in the running of the organisation.²¹⁸

Even though the 2008 governing document guaranteed formal voting rights for all members, interview data suggests that in the past, the main decisions related to organisational activities and strategy were made by the chairperson, who was PIF's founder.²¹⁹ Members were not engaged in rule-based participation. A member who was an active volunteer in PIF said that she did not remember being invited to the AGM in the past:

“[...] no, you know I do not recall seeing anything about AGMs or anything like that because I might have gone, you know.” (PIF 25.05.2017).

From the perspective of members, the chair and the director of operations were responsible for strategic decision-making:

“I suppose really that the chair and the director of operations were sort of the two-key people. The board clearly had a role strategically, but I guess in my involvement I was a bit less aware of that really. It was really the chair, thinking about it, the chair and the director of operations the key people who set the tone and set the agenda for us in the voluntary roles really and that translated into the activity that we delivered for members.” (PIF 25.05.2018).

Another interviewee suggests that in the last few years the employed staff remain heavily involved in decision-making processes over programmatic priorities (PIF 02.05.2017).

This means that before 2015, only a limited section of the membership was invited to participate at AGMs and engaged in rule-based participation. And even though wider members had formal voting rights from 2008-2010, the main

²¹⁶ PIF 02.05.2017; PIF 31.05.2017

²¹⁷ Our History <https://www.pifonline.org.uk/about-us/our-history/> accessed on 17.08.2018

²¹⁸ Our History <https://www.pifonline.org.uk/about-us/our-history/> accessed on 17.08.2018; PIF 04.06.2018

²¹⁹ PIF 04.06.2018; PIF 02.05.2017

decisions were carried by the leadership. This was reflected in the low quorum for holding a general meeting in the statutes set on two persons entitled to vote upon the business of the company. The de facto limitation of formal voting rights was enabled by the presence of leadership interest for centralisation, absence of rule-based participation and the legal form, according to which members of the executive can be the only voting members in the organisation.

The findings, as summarised in Table 12, indicate that in the three cases presented, wider membership did not engage in rule-based participation in the period before the centralisation of formal voting rights was initiated by the leadership. In other words, a lack of legal backing for the wider membership's enfranchisement, the absence of available voting rights, and the leadership's desire for centralisation combine to limit formal voting rights to the executive board. NAPA and SAS are two cases where we find a change in the governing document in the UK, whilst PIF did not alter the governing document, but interpreted that only members of the executive board had voting rights.

When contrasting NAPA and SAS with Vitiligo.nl - a Dutch case characterised by absence of rule-based participation of the wider membership and presence of leadership's interest for centralisation – it becomes clear that the combination of factors that resulted in change to the governing document in the former cases did not have the same effect in the latter case. Vitiligo.nl in practice decreased the number of members on the board from 9 to 4. This was further underpinned by a change in the governing document in 2011 that allowed unlimited office terms for members of the board.²²⁰ The amendment of the governing document to increase the power of board members shows that formal rules are an important reflection of the leadership's interest in centralising the decision-making of the organisation. Nonetheless, Vitiligo.nl did not limit the formal voting rights of the wider members because, legally, they cannot limit the powers of the annual meeting of members. Their governing document, as long as they are formal association, will provide formal (and actual) opportunities for members' influence. Hence, the legal regime and the legal form in which organisations operate shapes the potential for membership influence.

²²⁰ E-mail correspondence on 10.24.2017 and 10.26.2017.

Table 12: Conditions for Change of Formal Voting Rights

Regulatory regime	Organisation	Use of voting rights before change	Leadership initiative for centralisation	Outcome
UK	National Activity Providers Association	Limited	Yes	Change of governing document in 2014
	Surfers Against Sewage	Limited	Yes	Change of governing document in 2012
	Patient Information Forum	Limited	Yes	Informal change in 2015
Netherlands	Vitiligo.nl	Limited	Yes	No change

6.4. Comparative Assessment of the Use of Member Rights in UK and Netherlands

In this chapter, I have focused on the rule-based participation of members in the ten organisations under study in the UK and the Netherlands. Firstly, I have presented findings on rule-based participation in the British and Dutch organisations that have formal voting rights guaranteed for their wider membership in their governing documents. Organisations were assessed on whether they hold AGMs for the wider membership and enable members to elect the executive in practice, as two aspects of formal voting rights which are subject to statutory regulation. In addition, I assessed whether members' participated in decisions regarding the programmatic priorities through voting, an area not specified in statutory regulation, but often being a part of the formal voting rights package granted in organisational rules. The expectation was that organisations with formal voting rights stipulated in their governing document will provide opportunities for use of these rights in practice and will have some level of rule-based participation.

The results suggest that irrespective of the legal system and the policy field, six out of seven organisations which granted formal voting rights for members in their governing documents have - as expected - some level of rule-based participation by the wider membership i.e. these organisations provide opportunities for usage

of formal voting rights in practice. This indicates that it is important to account for formal voting rights, because when given in the governing document, the leadership (board and/ or staff) offers actual opportunities for participation and members use these rights in practice. Importantly, across all the organisations that experience some level of rule-based participation, members not only elect the executive board, but also vote on programmatic priorities. The findings suggest that the presence of formal voting rights can be used as a proxy for rule-based participation, considering that accessing organisational data on rule-based participation is often more difficult than accessing data on formal rights in governing documents.

Secondly, I assessed the level of rule-based participation by members in organisations which currently limit such rights to the executive during the period when they still granted formal voting rights to the wider membership. The goal was to understand what led to the rule change, with an emphasis on the role of the legal regime and legal form in which organisations operate. The expectation was that the three organisations (NAPA, SAS and PIF) had low levels or an absence of rule-based participation in the period before the change, and a leadership with interest for centralisation of decision-making rights. The evidence shows that the three organisations (NAPA, SAS and PIF), before the change (i.e. limitation of formal voting rights to the executive board) experienced a 'lack of usage of formal voting rights' and action by the leadership to limit members' voting rights. These two factors in combination with the pre-existing option to limit rights to the executive for companies limited by guarantee in the UK led to the outcomes of memberships without formal voting rights. If we contrast the organisations that have formal voting rights in the UK (SBS, HOS and NHS Alliance) with those that do not (SAS, NAPA and PIF), we can notice that the former experience some rule-based participation in practice and have leadership which perceived members as important for the organisation's survival (SBS) and mission attainment (NHS Alliance, HOS).

In the Netherlands, despite the absence of rule-based participation and demonstrated interest of the leadership for centralisation of decision making, as found in the case of Vitiligo.nl, organisations have to provide for formal voting rights in the governing document and opportunities for the use of those rights in

practice.²²¹ This means that members of organisations that operate in legal regimes like the Netherlands have formal rights - even if they do not participate in practice - that can be activated in the future. This matches Lansley's (1996, 224) assertion that "legal or similar requirements may place the organisation in a constitutional strait-jacket which predetermines the amount of membership involvement which is possible."

In the UK, membership organisations have discretion to have or not to have formal voting rights for members and hence offer or not offer opportunities for rule-based participation, whilst in the Netherlands, membership organisations are required by law to give members formal voting rights, and organisations do so formally, and in practice. As said earlier, it is not strategically viable nor necessary for each non-profit membership organisation to have voting membership (Jordan and Maloney 2007). For example, surveyed membership charities in the UK have pointed out that members are often interested only in accessing information and they are not interested in exercising their right to vote (Charity Commission 2004, 14, 17). This means that the leadership often, beyond their interest in efficient decision-making processes, has other legitimate reasons to centralise formal voting rights. Therefore, the UK makes a convenient legal environment which enables organisations to adapt their governance in line with their needs. In comparison to the UK, the legal environment in the Netherlands, while protecting members' powers and, encouraging internal democracy, can pose a limitation for organisations for which it is more strategically viable to maintain a non-voting membership.

²²¹ Legally speaking, organisations like Vitiligo.nl have an option to re-register as foundation (alternative form available for non-membership non-profits) if they wanted to operate without membership altogether.

7. The Impact of Non-Profit Regulation on Board Professionalisation

7.1. Introduction

In this chapter, I present the results of the organisational level analysis regarding board professionalisation. The organisational level assessment aims to capture whether organisations exposed to regulation linked to distinct configurations of indirect benefits show different levels of board professionalisation. The second argument of this thesis is based on the analytical distinction that in each regulatory regime there are up to three configurations which differ in the combinations of indirect benefits they have. The three configurations differ in the type and intensity of regulatory constraints (i.e. reporting requirements) they are exposed to, that is to say organisations which have all indirect benefits are more constrained than those that have only legal personality, which in turn are more constrained than organisations which have none.

The *Board professionalisation expectation* is that non-profit membership organisations maintaining indirect benefits which are exposed to high reporting requirements and external supervision will undergo board professionalisation, whilst organisations which are exposed to lenient reporting requirements and little or no external supervision will not. The political entrepreneur (a chief executive, chairman or someone else within the leadership) facilitates professionalisation of the board in response to increased regulatory pressures related to indirect benefits. The need for increased competencies in the executive board may be reinforced by increased financial capacity which has implications for the complexity of the reporting requirements in relation to maintaining indirect benefits (see legal analysis).

Based on the legal analysis, we can expect that charitable companies (UK) and ANBIs (Netherlands), being exposed to high regulatory constraints, are more likely to show signs of board professionalisation than organisations exposed to low regulatory constraints i.e. operating only with legal personality or no indirect benefits. However, we need to keep in mind the qualitative differences between regulatory constraints to which ANBIs and charitable companies are exposed. Whilst ANBIs in the Netherlands have been exposed to higher reporting requirements since 2014, supervision of ANBIs is less strict and there are no

additional constraints on political activities such as those faced by charitable companies in the UK.

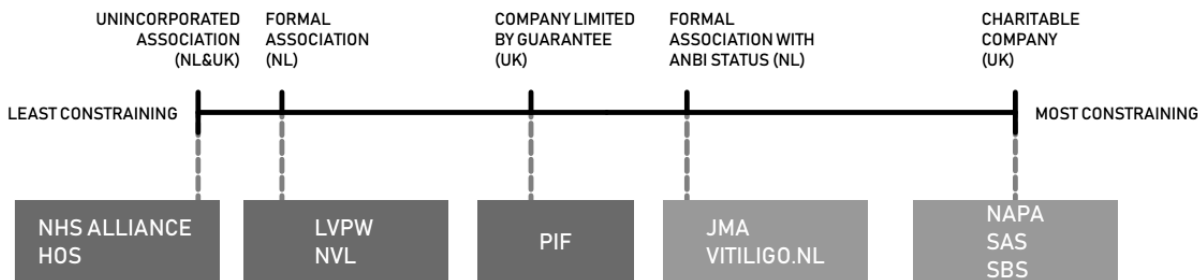
As discussed in the conceptual section, board professionalisation here is defined as the *external recruitment* of professionals and experts with competence (skills, experiences and knowledge) relevant for organisational maintenance, including administrative and policy skills.²²² For smaller membership organisations to have their descriptive representation affected by board professionalisation, i.e. the extent to which members of the board mirror the organisational membership (Guo and Musso 2007), the element of *external recruitment* of professionals with skills for organisational maintenance for unpaid positions should be present. Hence, the concept of board professionalisation has two elements, the first being external recruitment and the second being recruitment of professionals with competencies relevant for organisational maintenance such as legal, managerial, accounting, financial, PR, charity and non-profit experience. If the data shows that organisations satisfy both elements, then we consider that the organisation shows signs of board professionalisation. The organisational data was coded with 0 if the organisation did not recruit board members externally with particular skills in mind relevant for organisational maintenance or coded with a 1 if the organisation - after being exposed to regulatory constraints - sought board members with particular competencies relevant to organisational maintenance outside of the organisation.

Ten non-profit membership organisations were selected. Five are exposed to low regulatory constraints including two unincorporated associations in the UK, two formal associations in the Netherlands, and one company limited by guarantee in the UK (see Figure 4). The other five organisations are exposed to high regulatory constraints including three charitable companies in the UK and two formal associations with ANBI status in the Netherlands. As explained in the methodology, informal associations in the Netherlands were not selected because only small local clubs operate in this form, and the focus here is on national membership organisations. However, since the expected difference in the outcome is between organisations in the configuration of 'all indirect benefits'

²²² The roles in the executive organ are voluntary and unpaid, however, members of the board may be eligible to reimbursement or small honorarium for traveling and meetings.

versus the configurations of having only one indirect benefit and ‘no benefits at all’, the selected cases were suitable to explore the expectations.

Figure 4: Organisations Distribution across Configurations



Note: Lighter grey (on the right) are organisations that are exposed to higher regulatory constraints, while darker grey organisations (on the left) are exposed to lower regulatory constraints.

In the next section first, I present the findings for organisations in the UK and the Netherlands exposed to high regulatory constraints, and then I present the findings for organisations exposed to low regulatory constraints or none. In the end the chapter concludes with summary and discussion of the findings.

Table 13: Summary of Theoretical Expectations on Board Professionalisation

Name of organisation	Country and policy field	Intensity of regulatory constraints	Theoretical expectation
SongBird Survival (SBS)	UK Environment	Exposure to high regulatory constraints	Organisations are more likely to show signs of board professionalisation
National Activity Providers Association (NAPA)	UK Health		
Surfers Against Sewage (SAS)	UK Environment		
Jongeren Milieu Actief (JMA)	Netherlands Environment		
Vitiligo.nl	Netherlands Health		
Patient Information Forum (PIF)	UK Health	Exposure to low regulatory constraints or none	Organisations are less likely to show signs of board professionalisation
Dutch Association for Dragonfly Studies (NVL)	Netherlands Environment		
The National Association of Psychosocial Workers (LVPW)	Netherlands Health		
NHS Alliance	UK Health		
Hardy Orchid Society (HOS)	UK Environment		

7.2. Organisations Exposed to High Regulatory Constraints in the UK

National Activity Providers Association

NAPA, a charitable company in the field of health and social care, was set and effectively run by professionals in the care sector field on a voluntary basis (NAPA 30.05.2017). Since registration with the Companies House in 1997 until 2018 the organisation had 55 officers in total sitting on the executive board.²²³ The paying members of NAPA were professionals working in care homes in the beginning, while later the organisation expanded the membership by registering care homes as members in 2006 and today membership is available to individuals, homes,

²²³ See: <https://beta.companieshouse.gov.uk/company/03482943/officers>

groups of homes and organisations. NAPA experienced the oversight of the Charity Commission once it accessed charitable status in 1998. In 1998, the organisation employed briefly one of its trustees as Director of Training because of her “unique relevant experience”.²²⁴ The Charity Commission advised NAPA that the trustee who was employed for the training post should resign²²⁵ from the position as a trustee due to receiving payment.²²⁶

In the early days, members of the board were recruited from within the membership. Some of the board members recruited early on had experience in the non-profit and public sector. For example, one of the board directors in 1997 had 20 years of experience as an Education and Policy officer for Age Concern, a big charity in the UK.²²⁷ She could contribute with knowledge of the wider non-profit care sector focusing on the needs of older people.²²⁸ This board member was initially invited to join the Steering committee and remained active as a trustee until 2006.²²⁹ Another member of the board was an Inspector for the Royal Borough of Kensington and Chelsea and representative of the National Association for Inspection and Registration Officers.²³⁰ This means that the organisation early on was relying on people with professional skills which can support organisational maintenance within the non-profit care sector.

In the years after accessing indirect benefits, NAPA continued to recruit professionals from within the membership. The trustees recruited in the period after accessing charitable status had considerable experience in the care sector and professional careers in the non-profit sector.²³¹ Profiles of newly appointed trustees were presented in NAPA's newsletters. One of the board members recruited in the year after accessing charitable status, worked in a charity called Turning Point and later became a Leisure Services Manager at a care home.²³² Another board member with experience in the non-profit sector was recruited by

²²⁴ Annual Report and Accounts 31st December 1999, 3; Annual Report and Accounts 1998, 3

²²⁵ The trustee resigned on March 31st 2000 (Annual Report and Accounts 1999)

²²⁶ Annual Report and Accounts 1999

²²⁷ NAPA Newsletter 2003, Vol. 7, issue 2, 5

²²⁸ NAPA Newsletter Winter 2003 Volume 7 Issue 2, 5

²²⁹ NAPA Newsletter Summer 2006 Volume 10 Issue 2, 13

²³⁰ NAPA Newsletter December 1997 Volume 1, Issue 2, 11

²³¹ NAPA Newsletter 1999, 2:3, 3; NAPA Newsletter 2000, 4:3, 2; NAPA Newsletter 2002, 5: 3, 4

²³² NAPA Newsletter Spring 1999, Volume 2 Issue 3

invitation from within the group of active NAPA members.²³³ This trustee was a leader of the longest standing NAPA regional group in North East Region, and the organisation believed that “her appointment as a trustee brings the regions into the heart of NAPA management and development [...]”.²³⁴ The chairman appointed in 2002 was also an ‘organic leader’ coming from the membership of NAPA. He was an employee at the Royal National Institute for the Blind.²³⁵ The current chairman of the board of NAPA has become a trustee in 2001 and later chairman in 2012.²³⁶ He also had a long-life experience in the care sector and was recruited from within the membership of the organisation. In 2002 they invited the Regional Coordinator of Disabled Persons Assembly to become a trustee.²³⁷ One of the trustees appointed in 2003 was a “qualified social worker and has an MSc in policy analysis and social policy development.”²³⁸ She had a long-life career in the voluntary sector with skills related to community development, training and management.²³⁹ Another new trustee recruited the same year was a National Leisure Advisor for BUPA Care Services and had experience in local government management of sport, leisure, recreation and healthy lifestyle provision.²⁴⁰

In the period after a full time CEO position was hired in 2005,²⁴¹ the organisation continued to appoint skilled trustees from within the membership. In 2005, the newly appointed trustee at the time of joining the board was a Centre Consultant to the Leveson Centre for the Study of Ageing, Spirituality and Social Policy and Secretary of the Christian Council on Ageing Dementia Working Group.²⁴² In 2006, NAPA recruited an area manager working for Anchor Homes.²⁴³ In 2009, the chair of Age Concern became NAPA’s trustee.²⁴⁴

²³³ NAPA Newsletter Spring 2001 Volume 4 Issue 3, 2

²³⁴ NAPA Newsletter Spring 2001 Volume 4 Issue 3, 2

²³⁵ NAPA Newsletter Spring 2002 Volume 5 Issue 3, 1

²³⁶ Reports and Accounts Year ended 31 March 2013

²³⁷ NAPA Newsletter Spring 2002 Volume 5 Issue 3

²³⁸ NAPA Newsletter Summer/Autumn 2003 Volume 7 Issue 1

²³⁹ NAPA Newsletter Summer/Autumn 2003 Volume 7 Issue 1

²⁴⁰ NAPA Newsletter Spring 2003, Volume 6 Issue 3, 2

²⁴¹ NAPA, Spring 2005 Volume 9 Issue 1

²⁴² NAPA Newsletter Spring 2005 Volume 9 Issue 1

²⁴³ NAPA Newsletter Summer 2006 Volume 10 Issue 2, 3

²⁴⁴ Living Life 2009 Spring, Volume 13 Issue 1

Since a new chairman was elected in 2012, NAPA developed a strategy for allocation of specific tasks to the trustees with the aim to “*make use of their talents and enhance the Officers’ work.*”²⁴⁵ According to the leadership, trustees complement the work of employed staff and represent the organisation:

“Every charity has to have a board of Trustees or similar overseeing body. We are very lucky to have Trustees that support the staff team really well and represent NAPA in many ways.” (NAPA Living Life 2012 Issue 3, 4).

In 2013, we see the first sign of a better planned approach towards the utilisation of skills of members of the board. Additionally, since 2013 NAPA recruited a group of specialist advisors with the aim to complement the skills that members of the board were missing. According to interview data, the people recruited in the advisory group were “key influencers in the sector”.²⁴⁶ One of the interviewees highlighted the need for expertise:

“We don’t know everything. We need people who are experts. When you’re a trustee you’re supposed to be an expert in everything because it can be legal, financial, democratic, philosophical. All sorts of questions come-up and decisions have to be made.” (NAPA 06.06.2017)

Even though this advisory body was not formed immediately after accessing charitable status, an interviewee suggests that it was established to be able to meet, among other things, increasing requirements related to charitable status. NAPA has recruited a legal advisor on the advisory board who supports legal matters related to governance (NAPA 06.06.2017). In 2015 NAPA recruited highly skilled and experienced trustees who they hoped will help them develop their work.²⁴⁷ They planned to identify a skill set for trustees and continue to develop the board of trustees through recruitment in the following years.²⁴⁸ When asked about any change in the way the organisation recruited members of the board, a member of the leadership said:

“The only change is that we have recently developed a policy and skills matrix which make recruitment a bit easier, but the method of recruitment has been the same. It is getting harder to find Trustees, and it appears there are more and more charities seeking Board Members, so the pool of available recruits is smaller.” (NAPA E-mail correspondence 13.09.2018)

²⁴⁵ Reports and Accounts Year ended 31 March 2013, 8

²⁴⁶ Reports and Accounts Year ended 31 March 2015, 7

²⁴⁷ Reports and Accounts Year ended 31 March 2015

²⁴⁸ Reports and Accounts Year ended 31 March 2015 and 2016; NAPA E-mail correspondence 13.09.2018

In 2016 NAPA's board was expanded by three "very experienced and skilled people" working in the care sector.²⁴⁹ The three new trustees had a diverse background in the care sector, including an activity organiser, a regional controller for Care Accounts at Unilever (financial skills) and a director of design studio which collaborates with third sector organisations.²⁵⁰ In addition, NAPA developed specific role descriptions for the Special advisors²⁵¹ and recruited special advisors for dementia care, catering, *legal and regulatory issues*, marketing and events, and IT.²⁵² When asked about the way members of the board were recruited, an interviewee specified that new members are recruited through networking and that both trustees and staff are actively involved in this process.²⁵³ They are looking for skills which they are missing in the board and members of the board commonly are expected to have experience with care homes, activity provision, housing, accounting, fundraising and strategy.²⁵⁴ Out of the five last trustees that were recruited, three were recruited from outside of the organisation, suggesting that NAPA has partially underwent board professionalisation. The trustees are appointed by invitation and from a network of contacts from the care sector:

"We aim to have a cross-section of skills and geographic representation. Potential Trustees are invited to attend and observe a Meeting prior to being formally appointed. All new Trustees are sent an information pack based on materials generated by the Charity Commission." (Financial Statements for The Year Ended 31 March 2016, 3).

According to an interviewee, NAPA limits the recruitment of trustees to people in the care sector who, even though recruited externally, are representative of the boarder sector:

"The people who are on the board who are members out in the world of care; they are a representative member, they don't represent all members because that would involve a huge complex system of gathering information and seeking opinion from 3000 people, which would just be too cumbersome, too difficult. So, we take note, we have members on the board, [...], we are looking for more trustees at the moment and we're trying to make sure that they are members." (NAPA 06.06.2017).

²⁴⁹ Accounts and Reports, Chairman's report The Year Ended 31 March 2016

²⁵⁰ Accounts and Reports, Chairman's report, The Year Ended 31 March 2016, 2

²⁵¹ Accounts and Reports 31 March 2016, 2

²⁵² NAPA Living Life Summer 2017, issue 1, 2

²⁵³ NAPA E-mail correspondence 13.09.2018

²⁵⁴ NAPA E-mail correspondence 13.09.2018

In summary, NAPA is recruiting members of the board externally with targeted skills for organisational maintenance in addition to recruiting members with specific skills within the organisation. The advisory board brings complementary skills for organisational maintenance in addition to the skills represented in the board of trustees. In terms of alternative explanations, NAPA was not dependent on state funding during the period when signs of board professionalisation appeared, so increased interest in bringing external competencies in the organisation did not come as a result of maintaining state contracts or grants. In fact, the organisation generated its own income and experienced weakening of financial capacities in this period. Board professionalisation can be potentially related to the need to enhance the pool of competencies NAPA could use on a voluntary basis, in light of decreased financial capacity and paid support. Interview data suggests that the perceived complexity of maintaining a charitable organisation and particularly the responsibilities of trustees, invited for a more careful planning and focused recruitment of competencies beyond the organisational membership.

Songbird Survival

Songbird Survival, a charitable company working in the field of environment, was formed in 1996 and in the first three years of its existence was led by a group of 15-20 people who were all involved on a voluntary basis (SBS 26.03.2017). Since 2000 when the organisation registered with the Companies House, a total of 35 officers served as directors of the organisation²⁵⁵. After incorporation and gaining charitable status in 2001²⁵⁶ and until 2005, SBS continued to operate without employed staff, and the trustees managed the financial and administrative matters, publicity and events, and membership responsibilities on a voluntary basis.²⁵⁷ In the formative stage, the executive board largely developed from the founding members who set the organisation and some of them were part of the board until 2004.²⁵⁸ The initial members of the board looked for like-minded people who would carry forward the aims of the organisation (SBS 06.07.2018).

²⁵⁵ See: <https://beta.companieshouse.gov.uk/company/04078747/officers>

²⁵⁶ Before accessing charitable status, the organisation operated under the name Songbird Survival Action Group (SBS Update Winter 2003/2004, 1).

²⁵⁷ Annual Report 2004, Companies House

²⁵⁸ SBS Update Winter 2003/2004, 1

In the period 2001-2003, one of the trustees recruited influential trustees externally, some of whom are still members of the board (SBS 26.03.2017). The newly recruited trustees had links and influence that could bring finances to the organisation (i.e. fundraised for scientific research) and support its survival (SBS 26.03.2017). One of the trustees was a registered accountant and maintained the reporting to the Companies House and Charity Commission (SBS 26.03.2017), however this was not extremely demanding because of the small budget.²⁵⁹ The office work was done by another trustee on a voluntary basis to get the charity started.²⁶⁰

Some of the trustees engaged in the organisation had considerable experience in the non-profit conservations sector. One of the long-standing trustees was active in the non-profit conservation sector in the UK and actively involved in the Countryside Movement, the Game and Wildlife Conservation Trust, the Council of the National Trust, Natural England and the Countryside Business Trust.²⁶¹ Also, another of their long-term trustees who acted as a treasurer was involved in the work of other charities.²⁶² In the past, the directors met four to six times a year to decide on the organisational direction.²⁶³ In their annual accounts, SBS points out that the organisation benefits from the voluntary work of its directors and they estimate a sum which is saved by not paying the professional expertise of their trustees each year.²⁶⁴

In the years following access to charitable status, as well as in recent years, the members of the board were dominantly recruited outside of the organisation. According to the interview data, the organisation is looking to recruit trustees who have management skills and have interest in the countryside and songbirds (SBS 06.07.2018). In addition, trustees are expected to have financial skills and knowledge of the policy making process. Some of the skills that are commonly represented in the board are: "Ornithology, Environment, Countryside,

²⁵⁹ In the year after accessing charitable status the organisation had a small budget - £13 983 total income and £2427 total spending in 2001- and £18 681 total income and £5770 total spending in 2002 (Accounts and Report 2001 and 2002 Company House).

²⁶⁰ Song Bird Survival Newsletter, SBS Update Autumn 2003, 1

²⁶¹ Song Bird Survival Newsletter, Winter 2013, 1

²⁶² SBS 26.03.2017; SBS 06.07.2018

²⁶³ Accounts and Report from 2007, Companies House

²⁶⁴ Accounts and Report from 2004, 2008, 2009, 2010, 2011, 2012, 2013, 2016

Government/Politics, Networking, PR, *Charity/Governance/Legal, Finance, Fundraising*” skills.²⁶⁵ Trustees have the responsibility to maintain the charitable status:

“So, the responsibility lies with the board of trustees and they will [go] through a series of regular by-monthly meetings [to] ensure we are meeting all our obligations under the Charities Act and other things, ensure that we are following our strategic direction, and ensure that we are getting the best value for money from the funds we raise from our members and from charitable trusts and other sources.” (SBS 06.07.2018).

Another interviewee explains that the process of recruiting trustees is happening on a continuous basis “as it can take a long time to find people with the right skills and understanding of our charity”.²⁶⁶ In addition, the interviewee said that the trustees prefer to recruit new trustees through their own contacts *outside the organisation*, and in the past 12 years very few long-standing members were interested to join the board of trustees when invited.²⁶⁷ The existing profiles of trustees indicate that most of them had some experience in leading positions in other non-profit organisations. For example, the nominated treasurer trustee is an experienced trustee who has overseen the financial work of other charities in the past (SBS 06.07.2018).

In summary, SBS is a charitable company, and we expect that it will undergo board professionalisation over time. The findings indicate that the element of external recruitment is present –as well– as the targeted recruitment of trustees with particular skills is present,²⁶⁸ which means the theoretical expectation is confirmed. The organisation did not have access to state funding throughout its lifetime, and board members were sought outside of the membership when accessing charitable status and later. Trustees were engaged in maintaining indirect benefits in the past, and yet new trustees with understanding of charity and legal matters are sought after, despite the fact that the organisation is being led by a professional manager since 2012 and has five members of staff.²⁶⁹

²⁶⁵ SBS E-mail correspondence 20.06.2018

²⁶⁶ SBS E-mail correspondence 20.06.2018

²⁶⁷ SBS E-mail correspondence 20.06.2018

²⁶⁸ SBS 06.07.2018; SBS E-mail correspondence 20.06.2018

²⁶⁹ Account and reports 2016

Surfers Against Sewage

SAS is a charitable company that operated as a company limited by guarantee for most of its life. From its foundation until it accessed legal status in 1994, SAS had a voluntary Committee of about eleven people. SAS operated as a national pressure group and concluded early on that it could not access charitable status due to their lobbying activities.²⁷⁰ The Charity Commission informed them that charities “are not allowed to try to change the stance of government”.²⁷¹ SAS helped to set a charity which was registered in 1993 and for a while operated as the educational arm of the organisation, however, this was a marginal activity.²⁷² In terms of paid staff, few months after the Committee was formed in May 1990, the organisation hired the first member of staff. This was possible because the organisation’s budget grew in the first months through membership contributions, private sponsorships and selling of merchandise. The membership rapidly grew to 1000 in 1990.²⁷³ The employee had the responsibility to propose the budget and the program, which were then approved by the executive organ, the committee (SAS 26.05.2017).

In the early days, members of the board were recruited from the local community i.e. local members, while later on the board opened for members from other regions who were interested to serve in the board and had certain skills.²⁷⁴ Occasionally the organisation drew board members outside of the organisation, for example they had the membership director of Friends of the Earth on the board. However, they expected that these people would be members or joined the organisation as members.²⁷⁵ This means that early on SAS recruited skilled members on the executive board. Members attending the AGM in 1990s could

²⁷⁰ Pipeline news 1990, Number 2, 7

²⁷¹ Pipeline news 1990, Number 2, 6

²⁷² In the early newsletter it was reported that SAS helped to set up the Clear Water Initiative Educational Trust (Pipeline news Number 2, 1990, 6). In the Charity register, it is stated that the Clean Water Initiatives charity was registered in 1993 and removed in 2006 from the register due to transfer of funds. Any remaining income of the company that SAS registered in 1994 was to be transferred to the charity at the end of the year (Memorandum of Associations, Companies House, Article 6). This article was removed from the Memorandum of Associations in 2002.

²⁷³ Pipeline news 1990, Number 2

²⁷⁴ SAS E-mail correspondence 18.09.2018; SAS 26.05.2017

²⁷⁵ SAS E-mail correspondence 18.09.2018

also be up for an election as members of the board.²⁷⁶ Additionally, through the newsletter they were seeking skilled volunteers such as doctors, solicitors, microbiologists to play a positive role in the organisation.²⁷⁷ Nevertheless, according to an interviewee, these volunteers had an advisory role and did not serve as board members.²⁷⁸ The total number of board directors since the incorporation in 1994 is 48 officers.²⁷⁹

The members of the board in the period after accessing legal personality were to a large extent the founding members, and according to one interviewee they understood the business and offered advice regarding management matters (SAS 26.05.2017). During the 1990s, one of the trustees and chairman was a surfer who organised 'Surf to Save' contest and fundraised for SAS.²⁸⁰ Another trustee was also a surfer with keen interest in the marine environment and recruited within the membership.²⁸¹ In that sense they were 'organic leaders' emerging from the constituency.

SAS accessed charitable status in 2012 becoming a marine conservation charity. According to the new chief executive, gaining charitable status was a "*huge catalyst for the growth of the organisation*".²⁸² Among other things, charitable status helped the organisation to fundraise more effectively, get bigger projects, improve transparency, and *recruit voluntary trustees that help the managing of the charity*.²⁸³ The professional management of SAS believed that nothing will effectively change in the operation of the organisation since, in their opinion, SAS had been operating as a charity even before assuming this status.²⁸⁴ The trustees by law became responsible for the charity's management and the annual (financial) reporting in line with charity and company law.²⁸⁵ Trustees were externally recruited, which is one of the elements of board professionalisation. New trustees were recruited by the existing trustees who approached people that

²⁷⁶ SAS E-mail correspondence 18.09.2018

²⁷⁷ SAS Pipeline news 1990, Number 1

²⁷⁸ SAS E-mail correspondence 18.09.2018

²⁷⁹ <https://beta.companieshouse.gov.uk/company/02920815/officers> accessed on 25.07.2018

²⁸⁰ Pipeline issue 68 May 2007, 11

²⁸¹ Pipeline issue 68 May 2007, 22

²⁸² The Exeter Lectures: Hugo Tagholm, Chief Executive, SAS, May 2016

²⁸³ The Exeter Lectures: Hugo Tagholm, Chief Executive, SAS, May 2016

²⁸⁴ Pipeline issue 88 Summer 2012

²⁸⁵ Accounts and Reports 2013 and 2014, Companies House

might be interested to stand for an election.²⁸⁶ Despite having nine employees when accessing charitable status in 2012, SAS still benefited from the help of trustees and volunteers:

“(…), we had some pro-bono support from a solicitor’s firm and two of our trustees at the time [of gaining charitable status] had legal experience.” (SASa 16.06.2017).

Moreover, the organisation recruited voluntary trustees that had legal skills which helped to shape the organisation,²⁸⁷ meaning people with competencies relevant for organisational maintenance – the other element of board professionalisation. The organisation reported receiving services from trustees and their connected business organisations, including legal services.²⁸⁸

The organisation had access to state funding since 2012, however, that was not a dominant source of funding. Moreover, the organisation experienced increased financial capacities from £514,046 in 2012 to £1,009,846 in 2016.²⁸⁹ This resulted in increase of paid staff. Increased financial capacity also meant increased reporting requirements for maintaining indirect benefits. SAS, being a charitable company since 2012, and exposed to high indirect benefits as expected, underwent board professionalisation i.e. recruited trustees with skills relevant for organisational maintenance externally, specifically after accessing charitable status. The findings show that, as expected, the three organisations in the UK which have ‘all indirect benefits’ i.e. operate as charitable companies (NAPA, SBS and SAS), showed signs of board professionalisation after being exposed to high regulatory constraints.

7.3. Organisations Exposed to High Regulatory Constraints in the Netherlands

In the Netherlands, the expectation is that organisations maintaining ANBIs status are more likely to undergo board professionalisation since they need to comply with increased reporting requirements since 2014. These last

²⁸⁶ Accounts and Reports 2013, Companies House, 2

²⁸⁷ SASa 16.06.2017, The Exeter Lectures: Hugo Tagholm, Chief Executive, SAS, May 2016

²⁸⁸ Annual Accounts 2014, 31

²⁸⁹ Register of charities:

<http://apps.charitycommission.gov.uk/Showcharity/RegisterOfCharities/FinancialHistory.aspx?RegisteredCharityNumber=1145877&SubsidiaryNumber=0> accessed on 17.09.2018

requirements are related to higher public transparency e.g. publishing documents on the website. Two organisations with all indirect benefits – Vitiligo Netherlands (Vitiligo.nl) and Young Friends of the Earth Netherlands (JMA) were analysed.

Vitiligo.nl, is a formal association with ANBI status, working in the health sector. Vitiligo.nl does not have to report to the Chamber of Commerce because they are too small for that (according to law, reporting applies to big associations with sizable enterprises) (Vitiligo.nl 16.10.2017). From its foundation until today the organisation has relied only on volunteers and did not employ any staff.²⁹⁰ They did not employ staff even though since the early days Vitiligo.nl continuously benefited from state subsidy (institutional support) for patient organisations (Vitiligo.nl 14.10.2017).²⁹¹

In the beginning (1990s) there were around nine people in the board and there was a division of tasks: some were preparing the newsletter and some organised regional events for members/ meetings with dermatologists (Vitiligo.nl 14.10.2017). Up until 2000, there were many different people who were running the organisation and were responsible for maintaining reporting requirements (Vitiligo.nl 16.10.2017). In the past it was difficult to recruit any volunteers among members, so people were not intentionally recruited for the skills they possessed in the board – but whoever wanted to join and had a little experience in administrative work or PR could join (Vitiligo.nl 16.10.2017). The organisation has a treasurer who has been responsible for the financial operation of the organisation (i.e. accessing state subsidy) for around 16 years and he is a highly skilled volunteer (financial auditor) with experience in the private sector who was recruited from the membership. All invoices are overseen by treasurer and members-administrator (Newsletter May 2010). In accordance with law, when the subsidy does not require external accountants, an auditing committee composed of ordinary members takes on the responsibility of supervising the treasurer's work (Newsletter May 2010).

The organisation underwent board professionalisation in 2011, defined here as the external recruitment of skilled board members for unpaid positions who

²⁹⁰ Vitiligo.nl 14.10.2017; Vitiligo.nl 16.10.2017

²⁹¹ Later the subsidy was allocated by Fonds PGO which manages the subsidy scheme on behalf of the Ministry of Health, Welfare and Sport.

possess competencies relevant for organisational maintenance. This followed change in voluntary leadership in 2009 when a new chair was invited to the board. The new chair wanted to “make the association a real organisation with business aims” and “a real strategy” (Vitiligo.nl 14.10.2017). In that period, the mission of the organisation changed from being focused on exchanging patients’ experiences about the disease towards making vitiligo visible for the medical world and the wider public in the Netherlands (Vitiligo.nl 14.10.2017). To achieve the new mission the chairman allocated 75% of the state subsidy to a qualified communication consultancy to devise a communications strategy for the organisation (Vitiligo.nl 14.10.2017). On the basis of the new strategy, the chairman found that 50% of the members of the board cannot contribute to the realisation of the communication strategy – thus, new job profiles were designed for members of the board (Vitiligo.nl 14.10.2017). As a consequence, the organisation went from 9 to 4 members of the board – which was a significant change underpinned by a change in the governing document in 2011 allowing unlimited term for members of the board.²⁹²

Before the leadership change in 2009 the board was composed mainly of volunteers who were patients and did not have specialised skills for maintaining the organisation, except the treasurer (Vitiligo.nl 14.10.2017). The new chairman had extensive experience with health consultancy in the Netherlands in the past and wanted to install professional governance in the association to be able to achieve the new organisational mission/strategy (Vitiligo.nl 14.10.2017). There was an expressed intention to make the administering of the organisation as of that of a think tank and to bring [skilled] volunteers to occupy leading positions (Newsletter 2011). According to one of the interviewees, all the members of the board were intentionally recruited because of being professionals in their area of work (Vitiligo.nl 14.10.2017).

Vitiligo.nl had tax beneficial status in the early years, however it lost it due to non-compliance with reporting (Vitiligo.nl 16.10.2017). Later, it accessed ANBI status in 2014, the year when regulatory constraints were increased. This means that board professionalisation occurred before accessing ANBI status. The main sources of funding for the organisation are membership fees, sponsorships and

²⁹² E-mail correspondence on 10.24.2017 and 10.26.2017

state subsidy by the Ministry of Health. Vitiligo.nl, as expected underwent board professionalisation, however, at the time when that happened the organisation was exposed to lower regulatory requirements related to the receipt of indirect benefits, meaning there is absence of the cause of interest. The board professionalisation was initiated by the leadership (chairman occupying unpaid position), who had a strong managerial and business background (i.e. health consultancy). This case shows that, in contrast to SAS and NAPA, organisations can also undergo board professionalisation when they are entirely led by volunteers i.e. do not have paid professional management to initiate this. The new leadership initiated a change in mission, and consequently adjusted the composition of the board to be able to meet the new mission. Hence, board professionalisation in this case is not related to exposure to regulatory constraints related to indirect benefits.

JMA, a formal association with ANBI status working in the field of environment, was registered at the Chamber of Commerce in 1991 (JMA 23.10.2017) and accessed ANBI status in 2012. The organisation had staff in the mid-90s when it started to receive subsidies from the government to promote environmental education among youth.²⁹³ However, in 1997-1998 JMA had to cut the employed staff because the decline of state funding was sharp and sudden (JMA 13.11.2017). In 1999 they started to receive financial support by Friends of the Earth Netherlands and soon they became their youth organisation.²⁹⁴ Since then, even though operating as a separate legal entity, JMA is under the patronage of Friends of the Earth Netherlands and benefits from their funding and administrative support.²⁹⁵ There were four employees that worked on projects in JMA until 2016 and as of 2017 there were no employees (JMA 23.10.2017).

As suggested by the legal analysis, reporting to the Chamber of Commerce in practice is minimal and they have more obligations towards their members by law, suggesting a greater focus on internal accountability (JMA 23.10.2017). The only contact they have with the Chamber of Commerce is once a year when they have to provide an update on organisational information i.e. change of members

²⁹³ JMA Newsletter 1996; Newsletter 1997 No.1 February, 7

²⁹⁴ JMA Newsletter 2003 No.1; JMA 13.11.2017

²⁹⁵ Huishoudelijke Reglement; JMA 13.11.2017; JMA 23.10.2017

of the board (JMA 13.11.2017). This is further confirmed by interview data - reporting requirements are not directed towards the state bodies but towards the members on annual level, they report how they spend the money and they have to submit an account to the members about their financial budget and the plans (JMA 13.11.2017). Similarly, based on interview data, JMA does not have to report information to the tax authorities to be able to maintain its ANBI status.²⁹⁶ Instead, they need to publish their policy plan, policy report and financial report on the website, and they share their statutes with the public (JMA 13.11.2017). The board is responsible for maintaining this status:

“If you receive it, it is quite easy to maintain it, because as an association you need to get a financial report anyway, because you need policy report and a plan anyway, so it is just updating the files on the website.” (JMA 13.11.2017).

The responsibility for financial reporting is held by the treasurer who is preferably someone with knowledge of administration and accounting, but they had treasurers that did not have experience and learned how to do the financial account (JMA 13.11.2017). The members of the board are recruited both internally and externally,²⁹⁷ and this has been a practice from the beginning:

“We usually try to ask people whom we know to apply for the board. At the same time, we post the vacancy externally since we would like to be transparent about these positions and also not miss the opportunity for talented people. This has been happening since its existence.” (Email correspondence 07.08.2018).

This means that the organisation recruits members of the board outside and within the membership, however, they are not necessarily recruiting skilled volunteers who would be able to maintain legal personality and ANBI status, since in practice, indirect benefits are straightforward to maintain.

In 2016 JMA started the process of integrating within the structure of Friends of the Earth Netherlands. In 2017 Friends of the Earth employed youth coordinators who were previously involved in JMA with the task to align the activities of JMA with the campaigns of Friends of the Earth (JMA 23.10.2017). The youth coordinators can influence JMA governance, even though they do not occupy formal positions in the governance, by providing advice to the board (JMA 08.11.2017). For example, the youth organisers were involved in choosing the

²⁹⁶ JMA 13.11.2017; JMA 23.10.2017

²⁹⁷ Interestingly, the 2010 statutes indicate that members of the board have to be members of the organisation (Article 12).

new board in 2017 (JMA 23.10.2017). They selected 10 out of 20 candidates for an interview for board roles. They looked for candidates which are affiliated with JMA to assure continuity and who had some experience in organising activities, communicating, team work (soft skills) and engagement in environmental issues (JMA 23.10.2017).

JMA is an organisation operating under high regulatory constraints related to the receipt of indirect benefits. While there are signs of external recruitment of members of the board with particular skills, this practice was established before the organisation accessed ANBI status. JMA relied on a bigger organisation for finance and administrative support since 1999, which have led to the introduction of more formalised recruitment of members of the board with targeted set of skills. Importantly, the data indicates that in practice maintaining legal personality and ANBI status is straightforward and this is especially true for organisations with smaller budgets like JMA. It seems, from this, that board professionalisation is not related to maintaining indirect benefits in the case of JMA, similar to Vitiligo.nl.

In the Netherlands, we find evidence that organisations operating with all indirect benefits have professionalised their boards, however, there is no evidence that this happened in relation to increased exposure to high constraints. The findings show that Vitiligo.nl underwent board professionalisation before accessing ANBI status, on the initiative of a chairman with business and managerial background. In the case of the Young Friends of the Earth Netherlands (JMA), the organisation showed signs of board professionalisation before they accessed ANBI status in 2012.

7.4. Organisations Exposed to Low Regulatory Constraints in the UK

In the following section the data on the three UK cases which are exposed to low regulatory constraints (PIF, HOS and the NHS Alliance) will be presented. The expectation is that these organisations will not show signs of board professionalisation.

PIF, an organisation exposed to low regulatory constraints, upon the initiative of staff and following the advice of external management experts underwent board professionalisation, even though the expectation was that organisations that have only legal personality are less likely to undergo board professionalisation. PIF, a

health non-profit, was founded in 1997, and accessed legal personality in 2008 by incorporating as a company limited by guarantee.²⁹⁸ Since incorporation in 2008 the organisation has had 13 board directors (unpaid positions) in total.²⁹⁹ The organisation was founded by a small group of patient information managers and health professionals led by the need to share information and facilitate learning in light of changing health policy and increasing importance of health information.³⁰⁰ The organisation has been led by the founder for a long time and the formal governing structure was established a decade since formation. This means that the formation of executive board followed also in the late 2000s:

“And my understanding is that this organisation was set up by one person because this one person had passion for having better information [...] So for a number of years the governance structures were not in place in the same way that they are now is my understanding. Actually, they’ve had to work very hard to get into more transparent processes just because of the way the organisation had grown up in the beginning [...] And so over the last number of years they’ve been working very hard for example to get a board up and running and be clear about the responsibilities of that board etc.” (PIF 21.05.2018).

In the early days, the organisation had a Steering Group, equivalent to an executive body whose members were recruited from within the membership.³⁰¹ Around 2005-2006, PIF had hired first paid staff to deal with members’ administration and services.³⁰² In 2009, after incorporation PIF employed three members of staff (executive manager, office manager and administration officer), two of whom were part time employees (PIF 31.05.2017). The staff was carrying out the administrative tasks and reporting to the Companies House with the additional support from an external professional accountant. During that period the strategic direction of the organisation was given by the chairman of PIF (PIF 31.05.2017). In the same period a Strategy Group was formed responsible for the organisational development and an Advisory group composed of members.³⁰³ In 2013 a Task and Finish Group conducted a review of the governance structure and recommended a board of executive directors to be elected, which would be responsible for “proper governance” and play a “fundamental role in the effective

²⁹⁸ PIF did not access charitable status because that would require setting up a new entity from scratch and a lot of paperwork to be prepared (PIF 02.05.2017).

²⁹⁹ <https://beta.companieshouse.gov.uk/company/06562222/officers> accessed on 25.07.2018

³⁰⁰ Our History accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018

³⁰¹ Our History accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018

³⁰² Our History accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018

³⁰³ Our History accessed at <https://www.pifonline.org.uk/about-us/our-history/> on 07.08.2018

running and growth of the organisation.”³⁰⁴ The Task and Finish Group was “a small group of outside senior people from various organisations” who had senior positions including chief executives of organisations, and people with finance and business background (PIF 04.06.2018). Based on their recommendations PIF started advertising “*quite widely for people to come and join the organisation in order to move in a strategic direction and to give much firmer footing.*” (PIF 04.06.2018). The organisation professionalised the board through targeted external recruitment of board members with skills relevant for organisational maintenance. An interviewee describes the kind of skills they recruited on the board:

“And within that they asked someone who had a finance expertise, they asked somebody who had a background in a fairly senior position within the voluntary sector who would be able to help us in strengthening our governance [...]. And then they did a board recruitment procedure, they had a full day of interviews with some of the people that had been involved in that review they set on the panel and after that they recruited about 4 or 5 new members as a governing board to become directors and they went from there really, and as far as I am aware that structure is still in place.” (PIF 04.06.2018).

In the following years, while some board members came from the membership, PIF continued to recruit members of the board externally (PIF 04.06.2018). The members of the board are recruited via online platforms and direct contacts (PIF 21.05.2018). In the past few years the selection and appointment of directors on the board is a formal process which entails application phase followed by an interview.³⁰⁵ They wanted to recruit people from outside of the organisation to help them see the bigger picture of how their cause fits the health sector:

“So [...] we asked for somebody in the NHS for example to join the governance body and that we would have that perspective, and that was someone who did not have anything to do with the organisation before, so we sort of got to the point where just having people from the membership was too internally focused and too much focused on just health information so we wanted to expand that a little bit and that is what we did than [...].” (PIF 04.06.2018).

Another interviewee recalls that in the period between 2012 and 2014 PIF mainly looked for directors who had knowledge about the patient information landscape and not necessarily people from other sectors (PIF 25.05.2018). However, more

³⁰⁴ History section accessed at <https://www.pifonline.org.uk/about-us/our-history/on> 02.05.2017; ‘Board level opportunities at PiF’ <https://www.pifonline.org.uk/leading-the-way-in-consumer-health-information-board-level-opportunities-at-pif/> accessed on 19.06.2018

³⁰⁵ PIF 02.05.2017; PIF 21.05.2018

recently, PIF identifies the kinds of skills required and recruits people who can bring those skills in the organisation (PIF 21.05.2018). For example, one of the directors recruited more recently has an experience working on a senior level in a statutory organisation and could bring knowledge on how to enhance transparency and establish sound internal procedures, while another director comes from an accounting background (PIF 21.05.2018).

According to the expectations, PIF is less likely to undergo board professionalisation. The findings show that after a suggestion by the full-time staff, the organisation reviewed the governing structure by following external group of senior managers coming from different sectors. Following the advice of this task force, PIF started implementing external recruitment of board members targeting professionals with skills relevant for organisational maintenance, manifesting signs of board professionalisation after 2013. In 2013, PIF received a three-year grant from the Department of Health's Innovation, Excellence and Strategic Development (IESD) fund. Board professionalisation was initiated at the time when state funding was received, however the finances and constraints related to its maintenance were dealt with by the staff. Even though the organisation was not exposed to high regulatory constraints related to indirect benefits, it operated in an environment where high external accountability is expected. Therefore, one plausible explanation is that under normative pressures, i.e. professional staff and external professional managers' ideas of how the board should look like in light of the complex regulatory environment for non-profits in the UK, the organisation adapted through changing the characteristics of the board. There is no evidence that the organisation has been part of a self-regulatory initiative which might have inspired board professionalisation.

In line with the expectations, organisations that do not have any indirect benefits from the state i.e. are not required to report to any external body (HOS and the NHS Alliance) did not show signs of board professionalisation via external recruitment of skilled volunteers in the UK. HOS, an unincorporated association, since its foundation has been governed by a Committee (equivalent to an executive board) composed from members engaged on a voluntary basis. HOS has never had employed staff. The organisation has grown through the dedicated

work of volunteers - amateurs (HOS 06.10.2017). There are several defined roles in the Committee: treasurer, general secretary, conservation and publicity officer and chairman. In 2008, when the organisation had 667 members, HOS debated at an AGM whether they should pursue charitable status but decided that that will not benefit the organisation. HOS did not access charitable status because of the perceived regulatory constraints on internal governance that this might have posed:

“Well if you are a charity, a formal legal charity, you have to be governed and you are subject to the whims of the Charity Commission. So basically, [...] the complexity of your governance increases. So, although there are advantages of being a charity, [...] there are governance issues, you are subject to having a formal governing body that has to report back to the Charity Commission.” (HOS 06.10.2017).

They believed that the emphasis on external accountability brought by the charity status will distort their governing structure.

The members of the committee have been recruited internally at the AGM. For example, in 2001 the members were urged to join the Committee on a voluntary basis:

“This society can only survive and thrive if more members take on some responsibility for the running of it. If the 'usual suspects' are left to do all the donkey work, and no new blood comes onto the committee, the society will stagnate and eventually fade away. So, come on.” (HOS Newsletter 21, July 2001).

Similarly, at the 2002 AGM the Chairman urged the members to consider volunteering for the committee.³⁰⁶ In 2008, during the AGM the members were asked to volunteer for the post of the secretary:

“I would love to have a volunteer from the floor, or a small slip of paper or do come and talk to me or other committee members afterwards to discuss what is needed.” (Draft Minutes of the 15th Annual General Meeting, Sunday 20th April 2008).

This shows that the recruitment process of members of the committee was entirely inward-looking. HOS currently has a treasurer who happens to be a professional accountant in her business, however they do not intentionally recruit people with specific skills (HOS 06.10.2017). This means that the organisation has recruited board members internally and without targeting skills for

³⁰⁶ HOS Newsletter, No. 24 April 2002

organisational maintenance, as expected for organisations with no or little exposure to regulatory constraints. The mission of HOS requires limited financial and human resources and does not entail public engagement (this is very limited to a few conservation initiatives over the years), which might account for the lack of interest to recruit members with particular professional skills from within the organisation, and possibly beyond.

Unlike HOS, NHS Alliance is an organisation with great public presence and strong political agenda, and yet does not recruit professionals externally. Dating back to 1993, in 1998 it was formed by a group of general practitioners that were concerned about primary care,³⁰⁷ and over the years employed staff and used diverse funding sources, including state funding. In fact, because of their favourable financial situation, they had an employed member of staff from the very beginning. The size of staff reached around 10 members in 2000.³⁰⁸ The income from members was around a third of the total income over the existence of the organisation, the other sources of funding came from private sponsorships and state agencies such as the NHS and the Department of Health (NHS Alliance 23.06.2017). This means that the organisation was exposed early on to reporting requirements related to state funding. In 1998, the NHS Alliance established a subsidiary company limited by shares to be able to engage in trading activities (e.g. conferences) and receive private and public funding:

“One of the things we did do by the way, in order to satisfy some other requirements that we had about liabilities and VAT registration, was to establish a Private Limited Company as a wholly owned subsidiary, if you like, of the NHS Alliance which became it's trading arm. And that was an incorporated body with formal directors etc. (NHS Alliance 23.06.2017).

The change in leadership coupled with change in financial circumstances (decreased funding from private companies) in 2012 led to the redefinition of organisational mission (NHS Alliance 02.06.2017). Since then the organisation operates virtually without office-based staff.³⁰⁹ Instead, the organisation has contractual relationships for services with external professionals – finance officer,

³⁰⁷ Michael Dixon Speech ‘Thank you and goodbye’ posted on 10.12.2015 at <http://www.nhsalliance.org/michael-dixon-thank-you-and-goodbye/> accessed on 20.02.2017

³⁰⁸ NHS Alliance 24.05.2017; NHS Alliance 23.06.2017

³⁰⁹ NHS Alliance 02.06.2017, NHS Alliance 24.05.2017

accounting firm, administration person and PR and communication agency. This means that the changes in professional staff followed changes in the financial capacity of the organisation.

The organisation was governed by a National Executive (equivalent to an executive board) composed of 12 elected members and 12 co-opted members (without voting rights) and the leadership composed of the Chief Executive, chairman, vice-chairman and treasurer.³¹⁰ The leadership carried the strategic guidance and day-to-day decisions (NHS Alliance 02.06.2017). All the members of the executive were engaged on a voluntary basis except the chairman and the chief executive who received honorarium for their part-time work. The officers of the executive are professionals in the health sector with managerial skills and non-profit experience, however they are all elected or co-opted from within the membership of NHS Alliance.³¹¹ According to one of the interviewees the national executive is an open group where anyone can get involved and take an active role:

“[...] the people who've tended to get much more involved have been described as the national executive and that's a pretty open group so if anyone wants to be a part of it it's fairly easy to get involved and to play a more active role. [...] We have people that are experts in different areas and aspects of the primary healthcare field. And we would always go and try to recruit people who seem to be of similar mind and have particular expertise that would help support what we are trying to do.” (NHS Alliance 24.05.2017).

A long-term member of the NHS Alliance, when asked about the way members of the National Executive were recruited, said that potential members of the executive were nominated by a proposer and seconder and recruited from within the membership of the National Executive.³¹² This practice has not changed over time and “there was always a majority of elected members to reflect a democratic organisation.”³¹³ The organisation also recruited associate members which reflected clinical, managerial and patient perspectives, and appointed “special

³¹⁰ Michael Dixon Speech ‘Thank you and goodbye’ posted on 10.12.2015 at <http://www.nhsalliance.org/michael-dixon-thank-you-and-goodbye/> accessed on 20.02.2017; NA 02.06.2017

³¹¹ National executives and officers accessed at <https://www.nhsalliance.org/team-category/national-executives-and-officers/> on 11.06.2018

³¹² NHS Alliance E-mail correspondence 11.09.2018

³¹³ NHS Alliance E-mail correspondence 11.09.2018

advisers” without voting rights, who often attended the meetings of the executive and provided expertise on some clinical area, functional or political matters.³¹⁴

NHS Alliance, operating under low regulatory constraints, is less likely to undergo board professionalisation through external recruitment of skilled volunteers. The findings show that the organisation did not look for members of the board beyond the membership of the organisation. The organisation was exposed to regulatory constraints related to state funding and did not undergo board professionalisation, which shows that state funding is not related to board professionalisation. This is due to the fact that the leadership wanted an organisation representative of members, despite the variety of funding sources from private and public sources.

NHS Alliance and HOS, as expected, did not show signs of board professionalisation during their lifetime. NHS Alliance was exposed to higher regulatory constraints related to the receipt of state funding through contracts and grants – it had employed staff and recruited experts in the organisation, without granting voting power. The members of the national executive were recruited within the organisation. HOS similarly recruited members of the executive within the organisation but did not target people with professional skills. The two organisations differ in their funding structure, membership type and core missions, NHS Alliance being an advocacy group representing professional interests, and HOS being a conservation organisation gathering orchid enthusiasts. The shared trait of the two organisations is that they were not incorporated and did not have charity status. NHS Alliance is similar to NAPA and PIF in its core mission, membership type, staff and funding structure, however, it did not show signs of external recruitment of professionals for unpaid positions in the executive board. In the next section the findings of the four Dutch cases will be presented.

³¹⁴ NHS Alliance E-mail correspondence 11.09.2018

7.5. Organisations Exposed to Low Regulatory Constraints in the Netherlands

In this section we will assess the expectations that organisations exposed to low regulatory constraints in the Netherlands are less likely to undergo professionalisation of the board. Organisations operating as formal associations are exposed to minimal reporting requirements and are supervised internally by the members who elect the board. To assess the expectations, two organisations exposed to low regulatory constraints— Association for Dragonfly studies (NVL) and Association of Psychosocial Workers (LVPW), being organisations with legal personality only, were analysed. As expected, they did not show signs of board professionalisation.

NVL, an organisation exposed to low regulatory constraints in the field of environment has never had employed staff and has always been governed on a voluntary basis.³¹⁵ The organisational goals of NVL did not require employment of staff according to one interviewee (NVL 27.09.2017). The board mainly organises the annual study day, the annual meetings and the publishing of the magazines (NVL 24.10.2017). Moreover, this is possible because NVL is not exposed to government regulations [reporting requirements] and does not receive state subsidy.³¹⁶ An alternative explanation was given by one of the interviewees, who said that NVL benefits from the collaboration with two professionalised organisations which focus on dragonfly protection and that this is one of the reasons why NVL did not employ staff (NVL 06.10.2017). The two organisations which NVL partners with recruit professional staff in formal projects related to dragonflies i.e. to construct an online app for recognizing dragonflies, and these organisations benefit from the recruitment of volunteers-observers in NVL (NVL 24.10.2017).

In NVL, the voluntary board is responsible for maintaining the reporting requirements for the Chamber of Commerce.³¹⁷ There was no need to hire any professionals to be able to meet the reporting requirements.³¹⁸ The same was

³¹⁵ Written answers from NVL board 26.10.2017; NVL 06.10.2017; NVL 27.09.2017

³¹⁶ E-mail correspondence October 8, 2017 with NVL board member

³¹⁷ Written answers from NVL board 26.10.2017

³¹⁸ Written answers from NVL board 26.10.2017

confirmed by one of the founders who said that they did not recruit skilled volunteers to be able to maintain registration.³¹⁹ According to one interviewee, the board usually consists of 6-7 people who are playing various roles: a chairman, a secretary, a treasurer, youth organisations' representative, someone who is responsible for members activities (i.e. excursions, annual meetings etc.), PR and communications and someone who is responsible for the magazine (NVL 27.09.2017). When there is a free vacancy usually members offer to volunteer and sometimes they are invited from within the membership (NVL 27.09.2017). Sometimes people who are recruited for managing finances are expected to have some understanding of finances (NVL 27.09.2017). This means that the organisation, in line with expectations, recruited members of the board within the organisation.

LVPW, an organisation exposed to low regulatory constraints in the field of health, does not report financial accounts to the Chamber of Commerce, but they report to their members (LVPW 10.10.2017). According to an interviewee, in terms of *“the development of the organisation, the Chamber of Commerce has no influence at all”* (LVPW 10.10.2017). The first paid person was engaged in the organisation in 2004, nine years after registering as an association. The board governs the organisation (LVPW 10.10.2017). The board decided that they need paid support in the secretary office because the organisation was growing bigger and they were communicating with the health insurance companies and the Ministry of Health (LVPW 10.10.2017). Only one person was employed in the secretariat on a contractual basis – this person provides administrative support including finances, bookkeeping, communication with members etc. (LVPW 10.10.2017).³²⁰ The treasurer is responsible for the financial reporting to the members, however the secretary office prepares the account and the bookkeeping, and the treasurer just signs it (LVPW 10.10.2017). The treasurer is someone who has more or less experience with accounting, and this changes from year to year – in the moment they have an accountant for treasurer, but if they do not find someone with specialised skills they appoint whoever wants to volunteer for the position (LVPW 10.10.2017). The treasurer has to be able to

³¹⁹ NVL E-mail correspondence 11.10.2017

³²⁰ This position does not involve managerial and strategic tasks commonly performed by chief executives.

control the finances and make sure bills are paid, to be able to report to the members (LVPW 10.10.2017), and not external bodies.

The organisational structure of the LVPW was affected by the requirements of the insurance companies – they had to establish various specialised committees (validation, registration, education committee etc.) to satisfy the insurance companies' standards (LVPW 10.10.2017). The committees are run by skilled volunteers, who are recruited to match the needs of the committees – for example they look for someone who understands the accreditation and the educational system to serve in the education committee (LVPW 10.10.2017). When it comes to members of the board, they are recruited internally, and once elected, their qualifications are reviewed for establishing whether they fit the positions of chairman, secretary of financial advisor.³²¹ The organisation does not target members with particular skills:

“There are no other qualifications for board members. Generally, it has to do with trust that members of our organisation put in the people who have put themselves up for the job.” (E-mail correspondence 05.15.2018)

This means that LVPW, being exposed to low regulatory constraints, as expected did not show signs of board professionalisation. In summary, the two organisations in the Netherlands, which were exposed to low regulatory constraints, did not show signs of board professionalisation through recruitment of professionals outside of the organisation to occupy unpaid positions.

7.6. Comparative Assessment of Regulatory Constraints and Patterns of Board Professionalisation

In this chapter I assess whether in the period after the organisations became exposed to increased reporting requirements and external supervision³²² they have shown signs of board professionalisation, defined as the external recruitment of professionals and experts with competence (skills, experiences and knowledge) relevant for organisational maintenance, including administrative and policy skills. Table 14 summarizes the findings across all organisations analysed.

³²¹ E-mail correspondence 05.15.2018

³²² This happens when an organisation changes configuration from 'no indirect benefits' to 'all indirect benefits'

The results, as summarised in Table 14, show that the expectations hold for charitable companies in the UK, being the most constrained configuration, as well as for unincorporated associations in the UK and formal associations in the Netherlands, being the least constrained configurations. The three cases in the middle, JMA, Vitiligo.nl and PIF do not conform with the expectations. Even though JMA and Vitiligo.nl show signs of board professionalisation, the evidence does not support the claim that this occurred after the organisations accessed tax beneficial status i.e. changed configuration and become exposed to higher regulatory constraints. In the case of PIF, against the expectations, the organisation underwent board professionalisation. The policy field in which organisations operate, according to the results, is irrelevant, since both environmental and health organisations can show signs of board professionalisation in the UK when exposed to high regulatory constraints, and do not show signs of board professionalisation in the Netherlands.

Firstly, I have presented findings from the British organisations exposed to high regulatory constraints, followed by the Dutch organisations exposed to high regulatory constraints. In line with the theoretical expectations, the findings show that the three charitable companies in the UK, being exposed to high regulatory constraints and supervision, underwent board professionalisation. In the Netherlands, I found evidence that organisations operating with all indirect benefits (i.e. formal associations with ANBI status) have professionalised their boards, however, there is no evidence that this happened in relation to increased exposure to regulatory constraints. Rather, a reform of the board composition and targeted recruitment of external professionals was initiated by a chairman while the organisation was still exposed to low regulatory requirements. Similarly, in the case of JMA, external recruitment of members of the board with particular skills, as suggested, happened throughout the organisations' life, and not in correlation with increased regulatory constraints.

Secondly, I have presented the analysis of British and Dutch organisations exposed to low regulatory constraints. The findings show that two out of three organisations exposed to low regulatory constraints in the UK, as expected, do not show signs of board professionalisation. NHS Alliance and HOS, organisations operating as unincorporated associations, recruit the members of

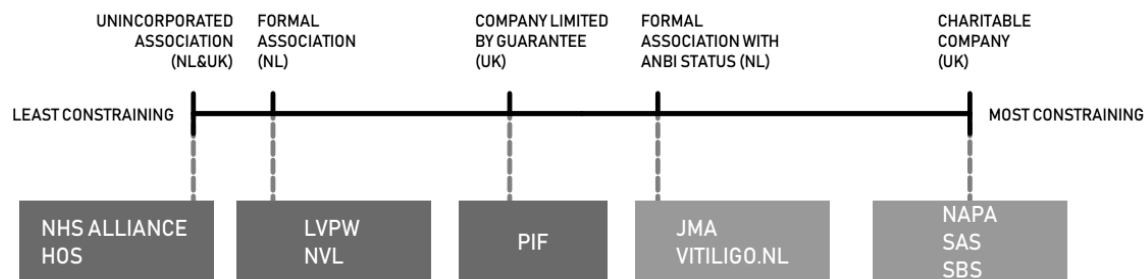
the board from within their memberships. The outlier is PIF, a company limited by guarantee, which against the expectations, shows signs of board professionalisation. At last, organisations in the Netherlands which were exposed to low regulatory constraints, as expected, did not undergo board professionalisation during their lifetime.

Table 14: Summary of Empirical Findings on Board Professionalisation

Name of organisation	Country and policy field	Intensity of regulatory constraints	Theoretical expectation	Results:
SongBird Survival (SBS)	UK Environment	Exposure to high regulatory constraints	Organisations are more likely to show signs of board professionalisation	Confirmed
National Activity Providers Association (NAPA)	UK Health			Confirmed
Surfers Against Sewage (SAS)	UK Environment			Confirmed
Jongeren Milieu Actief (JMA)	Netherlands Environment			Not confirmed
Vitiligo.nl	Netherlands Health			Not confirmed
Patient Information Forum (PIF)	UK Health	Exposure to low regulatory constraints or none	Organisations are less likely to show signs of board professionalisation	Not confirmed
Dutch Association for Dragonfly Studies (NVL)	Netherlands Environment			Confirmed
The National Association of Psychosocial Workers (LVPW)	Netherlands Health			Confirmed
NHS Alliance	UK Health			Confirmed
Hardy Orchid Society (HOS)	UK Environment			Confirmed

This means that organisations on the ‘extreme’ sides of the continuum (see Figure 4) – charitable companies in the UK and formal associations in the Netherlands, conform to the theoretical expectations. To be able to meet the complex regulatory requirements of charity status, including constraints on political activities, organisations tend to recruit trustees that have the skills and experience to meet these responsibilities. In the three cases the professional management facilitated board professionalisation by actively seeking new trustees with specific skills. My findings on charitable companies resonates with findings from previous studies. For example, Breen (2013, 854) has suggested that maintaining charitable status requires professional help and the diversion of volunteer labour from implementing the charity’s aims towards administrative demands. Morgan (1999) has studied the effect of the accounting regime applicable to charities as first implemented with the Charities Act 1993 and the Charity Accounting regulation 1995 and observed that the accountability regime led to the development of the role of the treasurer and the bookkeeper in small charities. He noted a regulatory push towards the semi-professionalisation of treasurers in charities (Morgan 1999). According to him: “One very substantial effect of the new regime, observed in charities of all sizes in the study, was an increased understanding of the role and responsibility of trustees as a whole in relation to the accounts.” (1999, 102). This has been reinforced with the development of regulation and accounting standards for charities, which means that trustees face increased responsibility towards the public (Cornforth 2003). Hence, Locke et al. have argued that “trusteeship is concerned with ‘proper administration’ rather than representation” (2003, 60). The complex regulatory requirements (Locke et al. 2003; Harrow and Palmer 2003) together with the strengthened powers of the Charity Commission place the burden of compliance on the board of trustees. The evidence on board professionalisation of executive boards of charitable companies also resonates with new research conducted by the National Council for Voluntary Organisations (Francis 2017) on the composition of executive boards of charities in the UK. The research found that the boards of charities in the UK rarely mirror the communities that they serve, and that trustees are selected from a narrow section of the society with above average education and income (Francis 2017).

Figure 4: Organisations Distribution across Configurations



Note: Lighter grey (on the right) are organisations that are exposed to higher regulatory constraints, while darker grey (on the left) are exposed to lower regulatory constraints

In terms of the three cases in the middle, there is one organisation (PIF) which does not conform with the expectations for low regulatory constraints in the UK, and has undergone board professionalisation, and two Dutch organisations which have not undergone board professionalisation related to maintaining indirect benefits, even though they were expected to. PIF, similar to NAPA (high regulatory constraints with signs of board professionalisation) and the NHS Alliance (low regulatory constraints with no signs of board professionalisation), operates in the health sector, represents professional interests, and had state funding and paid staff throughout its lifetime. Board professionalisation in the organisation happened under normative pressures generated by managerial staff and external advice given by senior managerial professionals from the health and care sector. As suggested in the literature, the professional management may shape the functions of the board (Cornforth 2003, 16) and use them to protect the organisation from the changing legal and financial environment (Baluch 2012, 18). This shows that organisations which operate exposed to low regulatory constraints, under isomorphic normative pressures can adapt their structure as if they are exposed to high regulatory constraints (Di Maggio and Powell 1983). The regulatory environment for charities and the increasing emphasis on external accountability may have spill-over effects, and prompt organisational entrepreneurs to over-fulfil by adaptation to perceived regulatory constraints. This will result in organisations exposed to different regulatory pressures adopting similar structures. In the case of the NHS Alliance, I did not find such isomorphism because the organisation had professional management that was drawn from

within the organisation and perceived value in having members as representatives on the executive body.

In the case of the Dutch organisations which have all indirect benefits (JMA and Vitiligo.nl), I found that board professionalisation happened before exposure to increased regulatory constraints. The findings show that Vitiligo.nl underwent board professionalisation before accessing ANBI status, on the initiative of a chairman with a business and managerial background. In the case of the Young Friends of the Earth Netherlands (JMA), the organisation showed signs of board professionalisation before they accessed ANBI status in 2012. Interestingly, what was observed as a constraining configuration (formal association with ANBI status), in practice manifested itself as low constraints' configuration. This means that the external regulatory pressures in the Netherlands related to indirect benefits are minimal. Even though ANBIs are supervised by the Tax Authorities, the supervisory powers are minimal in comparison to the Charity Commission of England and Wales. The tax authorities do not have the power to oversee and interfere with the internal workings of the organisations. Moreover, the additional reporting requirements in 2014 were not perceived as an additional burden. Organisations with ANBI status do not face constraints on political activities like organisations in the UK do. This means that board professionalisation in the two cases happened under normative pressures from the organisational leadership and not under coercive pressures from legal regulation (Di Maggio and Powell 1983).

Organisations on the left end of the continuum (see Figure 4), operating as unincorporated associations in the UK and formal associations in the Netherlands show no sign of board professionalisation. This means that organisations operating in configurations with low regulatory constraints have predominantly organisational members as board members, this being a characteristic of a membership-centred governing model. On the other hand, charitable companies in the UK are more likely to develop one of the characteristics of leadership centred governing models; a professionalised board. The findings on charitable companies in the UK are important because, in the case of membership organisations, this has implications for their representational capacity (Guo and Musso 2007). If members of the executive are not recruited organically from

within the organisation, then members of the board may not reflect the characteristics of the membership they represent and, whilst they might have professional skills to maintain the organisation, they might be less interested in pursuing the substantive interests of members (Bramble 2000; Guo 2018). In other words, it will shift the logic of operation from an expressive value-oriented mission to an instrumental logic of operation focused largely on organisational performance and survival (Frumkin 2002; Stewart 2014, 9-10). Whilst this might not be of central importance for solidary-style groups (Halpin 2010), it has direct relevance for groups which represent the direct interests of their members.

8. Consultative Participation across Governing Models

8.1. Introduction

In the previous three chapters we have explored the potential ways in which non-profit regulation related to legal forms and maintaining indirect benefits shape different aspects of internal governance. Here I use the results presented in previous chapters on rule-based participation and board professionalisation of organisations to develop expectations related to consultative participation across organisations. Organisations' governing model can be divided in membership centred, in which members engage in rule-based participation and are represented on the boards and leadership centred model in which members do not engage in rule-based participation and have boards dominated by external professionals. Consultative participation is defined as the opportunities for members' input on organisational matters and programmatic priorities. Unlike in the case of rule-based participation, members' input through consultative representation is not binding for the leadership because it is not rooted in formal voting rights enshrined in organisational statutes.

Four organisations - three in the UK and one in the Netherlands – have leadership centred models, meaning they do not have rule-based participation and have board professionalisation (NAPA, SAS, PIF, Vitiligo.nl). Four organisations - two in the UK and two in the Netherlands – have rule based participation and do not show signs of board professionalisation (HOS, NHS Alliance, NVL and LVPW). Two organisations, Songbird Survival (SBS) and Young Friends of the Earth Netherlands (JMA) have rule-based participation and professionalised boards. This means that in comparison to the previous group, members participate at AGMs, elect the leadership and vote on programmatic issues, but the board is mainly composed from externally recruited experts. Due to the presence of rule-based participation, I classify them as closer to having membership centred models and I develop the same expectations as for the organisations that fully fit the membership-centred model.

Table 15: Types of Governing Models across Organisations

Organisation	Legal regime and configuration	Rule-based participation	Board professionalisation	Governance model
Songbird Survival	UK High constraints	Present	Present	Membership centred*
National Activity Providers Association	UK High constraints	Absent	Present	Leadership centred
Surfers Against Sewage	UK High constraints	Absent	Present	Leadership centred
Patient Information Forum	UK Low constraints	Absent	Present	Leadership centred
NHS Alliance	UK Low constraints	Present	Absent	Membership centred
Hardy Orchid Society	UK Low constraints	Present	Absent	Membership centred
Vitiligo Netherlands	Netherlands High constraints	Absent	Present	Leadership centred
Young Friends of the Earth Netherlands	Netherlands High constraints	Present	Present	Membership centred*
National Association of Psychosocial Workers	Netherlands Low constraints	Present	Absent	Membership centred
The Dutch Association for Dragonfly Studies	Netherlands Low constraints	Present	Absent	Membership centred

Note: Songbird Survival and Young Friends of the Earth Netherlands do not fully fit the characteristics of the membership centred model.

The *Consultative participation expectation* is that organisations that are leadership-centred, to maintain the connection with their membership and prevent fluctuations, will provide many opportunities for consultative participation. Organisations with membership-centred model of governance will provide fewer opportunities for consultative participation because they already invest in rule-based participation and have members who serve on the executive board.

Table 16: Expectations on Consultative Participation across Organisations

Organisation	Governing model	Expectations for consultative participations
National Activity Providers Association	Leadership-centred	Organisations will offer many opportunities for consultative participation
Surfers Against Sewage		
Patient Information Forum		
Vitiligo Netherlands		
Young Friends of the Earth Netherlands	Membership-centred	Organisations will offer only few opportunities for consultative participation
Songbird Survival		
Hardy Orchid Society		
NHS Alliance		
National Association of Psychosocial Workers		
The Dutch Association for Dragonfly Studies		

8.2. Consultative Participation in Organisations with Leadership-centred Model

In this section I will present the findings for the organisations with leadership centred models: NAPA, SAS, PIF and Vitiligo.nl, characterized by absence of rule-based participation and the presence of professionalised boards. The expectation is that these organisations offer many opportunities for consultative participation to compensate for the lack of members access to authoritative decision making through participation at the AGM and the board room.

NAPA is an organisation with leadership centred model of governance and throughout its existence provided many opportunities for consultative participation. This has remained the same since 2014, when rule-based

participation was limited. In the early days NAPA involved members in consultations over the strategic priorities of the organisation in various ways. For example, in 1999 the members were involved in a discussion over the future development of NAPA and their input was taken as a basis for drawing the Strategic plan for 1999-2000.³²³ This continued later, and trustees asked members through the newsletter to contribute with their ideas in the making of the development strategy for the following three to five years:

“It would be excellent if individual members or groups of members would share with us in this task. Planners speak of a 'SWOT' analysis analysing what are the Strengths, Weaknesses, Opportunities and Threats - facing an organisation. During the next three months we shall be preparing the 'Business Plan'. Please contribute your ideas to our thinking on your behalf.”³²⁴

During the second half of the 2000s, employed staff and trustees continued to invite members' input through the newsletter.³²⁵

NAPA's office supported the work of local groups and local groups' representatives were invited at least twice a year to provide input on NAPA's work during the executive board's meetings.³²⁶ NAPA's staff also met with regional groups to map out members' needs in the regions and tailor the training approach of the organisation in accordance with those needs.³²⁷ Furthermore, through the newsletter, NAPA implemented a membership survey in 2003, to be able to assess the profiles of their members and understand their needs and expectations.³²⁸ In 2010 they conducted an online survey on how to improve the members services.³²⁹

In NAPA's newsletters, members' suggestions and feedback were regularly published in a section called 'How you see NAPA'.³³⁰ In addition to their magazine they created an online forum on NAPA's website to provide chance for people to

³²³ NAPA Newsletter Spring 1999, Volume 2 Issue 3

³²⁴ NAPA Spring 2001 Volume 4 Issue 3

³²⁵ NAPA Summer 2005 Volume 9 Issue 2, 2; NAPA Spring 2007 Volume 2 Issue 1

³²⁶ NAPA Spring 2001 Volume 4 Issue 3

³²⁷ Summer/Autumn 2003 Volume 7 Issue 1, 5

³²⁸ NAPA Winter 2003 Volume 7 Issue 2; Summer/Autumn 2003 Volume 7 Issue 1, 4; NAPA Summer/Autumn 2003 Volume 7 Issue 1, 1

³²⁹ NAPA Autumn 2010

³³⁰ NAPA Summer/Autumn 2002 Volume 6 Issue 2, 3; Spring 2005 Volume 9 Issue 1, 5

interact and provide feedback.³³¹ Members regularly provided feedback through their membership renewal forms³³²:

“Once again, we have received a good response to our questionnaire, thank you to members for their comments when renewing membership. Only by this exchange can we gauge our service to you.”³³³

An interviewee confirms that the NAPA’s approach towards members was direct and personalised and the organisation catered to members’ needs (NAPA 06.06.2017). Since 2014, when rule-based participation was limited, to maintain the link with the members, they have surveyed them on an annual basis.³³⁴ Moreover, NAPA organises annual conferences where members have a chance to provide feedback on the quality of services and express their needs (NAPA 30.05.2017).

PIF also has a leadership centred model of governance, and the expectation is that the organisation provides many opportunities for consultative participation. In the earlier days PIF established a newsletter to keep members updated and invited them to express their views in the newsletter:

“The Newsletter will now become a quarterly publication to keep you up to date with PIF activities and outside news, events and resources of interest. But above all we want the Newsletter to be your Newsletter a place where you can share your views and concerns about the issues that affect us all as the producers and providers of information for patients. So please put pen to paper (or fingers to keyboard) and send in your thoughts, questions and news. (PIF Newsletter issue 3 April 2002, 1).

PIF also introduced a discussion forum on the website.³³⁵ The main way in which the organisation received input from the members was through the regional coordinators, who are coordinated by the paid staff.³³⁶ Regional coordinators had access to members in their region and organised individual meetings with members, especially in the period 2011-2013 when there were less national events and trainings (PIF 31.05.2017). The regional coordinators reported on the concerns of the members in the area they represented and discussed the wider

³³¹ NAPA Summer/Autumn 2002 Volume 6 Issue 2, 2

³³² NAPA Summer/Autumn 2003 Volume 7 Issue 1

³³³ NAPA, Summer/Autumn 2002 Volume 6 Issue 2, 3

³³⁴ NAPA 30.05.2017; Reports and Accounts, Year ended 31 March 2013, 8; NAPA 30.05.2017

³³⁵ PIF 25.05.2018; PIF 21.05.2018; PIF 04.06.2018

³³⁶ PIF 31.05.2017; Services Manager Role description and person specification July 2014

national issues that impacted members.³³⁷ The network of the Regional and Country Co-ordinators was integrated in the Advisory Group in 2014.³³⁸ One of the regional representatives who was involved with PIF explains that the organisation was receptive for members opinions:

“As I recall the whole culture of the organisation was quite open to that, although it had all these formal structures it had an informal feel to it and I think it was the kind of organisation where any members could voice an opinion and that opinion would be listened to. [...]” (PIF 25.05.2018).

The advisory group contributes to the strategic direction of the organisation.³³⁹ People from the membership are asked to join the advisory group.³⁴⁰ The advisory board does not have a formal governance role, and one of the main roles is to support the information flow between the members’ groups and the secretariat (PIF 21.05.2018). One of the interviewees suggested that the input from the members represented on the advisory group was integrated in the organisational and programmatic planning of the organisation:

“And they were members from across the whole spectrum, because the membership is made up of NHS members of voluntary sector, charities, community interest companies and then also we had some private sector members from pharmaceutical companies and PR firms and various places like that and there was a mix of different members, so we tried to reflect that within the advisory group role, so they can bring some insights of the different sectors in the work of the organisation. That advisory group met twice a year and we would talk about the major issues within health information and try and make sure that what was going on the ground with the membership was fed up into our plans, in the business planning but also the longer strategic direction of the organisation.” (PIF 04.06.2018).

PIF has surveyed members regularly to get feedback on the kind of activities they would like to see in the future and other matters that helped the organisations tailor programmatic activities e.g. topics to be covered at events, difficulties they face in their practice or the kind of skills they want to develop.³⁴¹ Also, the surveys helped PIF to stay informed about the major concerns in the sector (PIF

³³⁷ PIF 31.05.2017; PIF 25.05.2018

³³⁸ PIF website: <https://www.pifonline.org.uk/about-us/our-history/> accessed on 17.08.2018; PIF 25.05.2018

³³⁹ PIF 02.05.2017; PIF website: <https://www.pifonline.org.uk/about-us/people-at-pif/> accessed on 16.03.2018

³⁴⁰ PIF 02.05.2017; PIF 21.05.2018

³⁴¹ PIF 02.05.2017; PIF 31.05.2017; PIF 04.06.2018

04.06.2018). They administer a biannual online members' survey (PiF Pulse) and other surveys.³⁴²

“[...] quite a lot of the work is based on feedback from members. So, the organisation regularly surveys its members both generally and specifically. So generally, in terms of what's important and specifically around particular projects.” (PIF 21.05.2018).

On the website, they report the survey results from different years on the satisfaction with PIF.³⁴³ In addition to surveys, members are asked to give regular input on policy and programmatic matters during PIF's events e.g. trainings and annual conferences.³⁴⁴ For example, members were asked during the annual conference to share their views on three key questions around consumer health information through electronic voting.³⁴⁵ While in the past there was an annual conference, now there are smaller events for members organised throughout the year (PIF 04.06.2018). In 2016, PIF launched their five-year strategy after consultation with members, partners and stakeholders.³⁴⁶ We can conclude that, as expected, PIF has provided multiple opportunities for consultative participation for members and maintained connected to them throughout its existence.

SAS, an organisation with a leadership-centred model of governance, throughout its existence has consulted members on various aspects such as campaigns and policy stances via surveys.³⁴⁷ Members also received questionnaires through the Pipeline newsletter to be able to represent their views on matters related to organisational policy.³⁴⁸ They were also surveyed about their needs and satisfaction with the membership.³⁴⁹ SAS wanted to understand the profile of the membership better for advertising and sponsorship purposes:

“Sadly a few people have been a bit upset by the income question – please don't take it personally, as we have no idea which questionnaire belongs to who! We're

³⁴² Services Manager Role description and person specification July 2014

³⁴³ <https://www.pifonline.org.uk/membership/what-do-other-members-think-of-pif/> accessed on 16.03.2018

³⁴⁴ PIF 25.05.2017; PIF 02.05.2017

³⁴⁵ PIF Online. 4.05.2012, accessed at <https://www.pifonline.org.uk/voting-results-from-conference-show-integrating-health-information-into-healthcare-delivery-is-the-biggest-challenge/> on 16.03.2018

³⁴⁶ New PIF Strategy posted on 14 June 2016 at <https://www.pifonline.org.uk/pifs-new-strategy-glance/> accessed on 16.03.2018

³⁴⁷ SAS 15.06.2017; SAS 16.06.2017; Wheaton 2007

³⁴⁸ Pipeline news issue 58, 2004, 14

³⁴⁹ Pipeline news issue 70 October 2007, 19

not being nose-y, all this demographic information is actually terribly important when trying to attract sponsors and advertisers. [...] The more data we collect, the more accurate it is, so if you haven't already, take your place in SAS history and take part in the most in-depth membership survey we've ever undertaken!" (Pipeline issue 72 May 2008, 20)

According to Wheaton (2007, 269) who did interviews with SAS' staff in August 2000, SAS were not interested that much in involving members actively, but more in attracting and retaining members as donors. He reports that "they capitalised on the 'cool factor', using the money earned from consumption to fund their campaigns" (Wheaton 2007, 269). However, in the same article, Wheaton (2007) talks about the membership survey that SAS conducted in 2000 which asked members about their opinion on SAS's strategy of influence. This suggests that members were consulted to some extent.

Another way in which members are involved is through regional representation. Members were recruited as regional representatives in an informal way during the 90s (SAS 26.05.2017). Regional representation was formalised in the second half of the 2000s, and regional representatives are SAS's link to the local members.³⁵⁰ The representatives are engaged on a voluntary basis and participate in local campaigns, recruitment and management of volunteers' activities, educational activities, fundraising and other projects of SAS.³⁵¹ The regional network reached 75 representatives in 2015.³⁵² The members of SAS are regularly encouraged through the newsletter to get in touch with their regional representative and get involved in the campaigns, fundraising activities and other events.³⁵³ The regional representatives are then consulted by SAS's staff via questionnaires on the situation in their areas and are asked to give feedback on the policy direction of the organisation.³⁵⁴ This suggests that members are mainly mobilised as volunteers, and they are not directly consulted on the programmatic priorities, except indirectly, through the members who serve as regional representatives. Except as volunteers, members in the past were mobilised to

³⁵⁰ Pipeline news, issue 63, February 2006, 11; Pipeline issue 78 winter 2009, 12; Pipeline autumn/winter 2011 issue 86, 19

³⁵¹ Accounts and Reports 2015, Companies House; SAS 15.06.2017

³⁵² Accounts and Reports 2015, Companies House

³⁵³ Pipeline news, issue 76 summer 2009; Pipeline news issue 78 winter 2009, 12; Pipeline news issue 79 spring 2010

³⁵⁴ SAS 23.06.2017; SASb 16.06.2017

report cases of pollution in their areas as part of SAS' project campaign Protect Our Waves,³⁵⁵ and in that way influenced the campaigns focus.³⁵⁶ SAS acted upon their reports and kept members informed about the outcomes of their lobbying and campaigning activities.³⁵⁷

After the organisation limited formal voting rights of members in 2012, members are still consulted through surveys. One of the interviewees said that in the past 10 years, SAS tried to create 360-degree feedback on what, how and whether they perform well, which included consultation with members (SASa 16.06.2017). For example, their 5-year strategy (2017-2022) was developed "in consultation with staff, trustees, regional reps, members, funders and experienced external facilitators."³⁵⁸ The decisions over the final strategy were informed by members and supporters' opinion.³⁵⁹ This means that SAS offers opportunities for consultative participation, however, in comparison to NAPA and PIF, there are fewer opportunities. Considering that since its foundation until 2012 rule-based participation was limited in practice, and since 2012 members did not have formal voting rights, we would expect plenty of opportunities to be offered for members to provide input on organisational and programmatic priorities. Even though there is evidence that they consult members on programmatic priorities, these are sparse. In line with the organisational mission, the focus is on political mobilization of members to support SAS's causes and engaging them in the role of volunteers.

Lastly, Vitiligo.nl is the only Dutch organisation in the sample with a leadership centred governing model. Members have formal voting right, meaning they have the right by statute to attend the annual general meeting and elect the members of the board.³⁶⁰ They also have an opportunity to give non-binding input on the programmatic priorities.³⁶¹ In practice, I found that there is absence of rule-based

³⁵⁵ The POW campaign was dedicated to the protection of surf spots from unacceptable levels of environmental impact, excessive impacts on wave quality and recreational water users right of access (Pipeline news issue 77 autumn 2009, 12).

³⁵⁶ Pipeline issue 77 Autumn 2009; Pipeline news issue 86, Autumn/ Winter 2011, 4

³⁵⁷ Pipeline news issue 86, Autumn/ Winter 2011, 5

³⁵⁸ Accounts and Reports 2016, 14

³⁵⁹ Accounts and Reports 2016, 17

³⁶⁰ E-mail correspondence 19.09.2018

³⁶¹ E-mail correspondence 19.09.2018

participation in the organisation. Therefore, the expectation is that the members will be given alternative opportunities in addition to the AGM to provide input on the programme and the strategy of the organisation.

In terms of consultative participation, the organisation has provided a forum on the website for interaction with members.³⁶² The organisation informs members about its events and campaigns through the newsletter (now magazine) and social media.³⁶³ Members are invited to provide input on the programmatic priorities of the organisation during annual thematic meetings.³⁶⁴ Vitiligo.nl have conducted a membership survey for their 20th anniversary,³⁶⁵ however there is no evidence that they conduct such surveys on a regular basis. Some members organise regional contact points, but this is something the organisation is trying to develop further (Vitiligo.nl 14.10.2017). The available evidence points at few opportunities for consultative participation.

Against the expectation, we find varying offer of opportunities for consultative participation within the group of four organisations with leadership centred governing model. NAPA and PIF, being service oriented organisations provide many opportunities for members' input on the services of the organisation, programmatic and policy matters. The two organisations represent professional interests within the health and care sector, therefore they have to be regularly informed about policy developments in the health and care sector and react in accordance with members interests. To achieve that, they regularly survey members, ask for feedback during events, maintain online forum for members, and have mediating structure (e.g. regional coordinators or an advisory group) through which staff is updated about members' needs. SAS, being an environmental advocacy group operating in the UK and Vitiligo.nl, being a patients' group operating in the Netherlands, have comparatively fewer opportunities for consultative participation than PIF and NAPA. SAS maintains the link to the members through regional coordinators and consults them through surveys. The members of SAS are citizens concerned for the marine and coastal environment and the organisation mainly engages them as volunteers in

³⁶² Newsletter 1 May 2007

³⁶³ Newsletter February 2012; Vitiligo.nl 14.10.2017

³⁶⁴ Newsletter May 2010, 3; Vitiligo.nl 16.10.2017

³⁶⁵ Newsletter February 2011

campaigns and activities. Vitiligo.nl on the other hand, gets input from members during their events and online (e.g. social media and website) and there is no evidence that they conduct membership surveys on a regular basis, while their regional contact points are yet to be developed. The members of Vitiligo.nl are mainly passive information recipients. The organisation has become more advocacy oriented and publicly visible since 2011, but that has not resulted in higher consultative participation. The four cases indicate that the offer of consultative participation can be better understood in reference to the core mission and type of membership of the organisation than in reference to the governing model.

8.3. Consultative Participation in Organisations with Membership-centred Model

In this section we turn to organisations with membership centred models. Organisations that have rule-based participation in practice, meaning members attend the AGM, elect the members of the executive board and vote on matters related to programmatic priorities are expected to provide only few opportunities for consultative participation. The organisations already invest in organisation of AGMs, and whilst there are channels for communication with the members, they do not invest additional resources for consultative participation.

SBS, an organisation that does not fully fit the membership centred model of governance, is characterised by both presence of rule-base participation and board professionalisation. SBS mainly consults members on matters related to the program and the strategy during regional events and through surveys conducted every few years.³⁶⁶ The leadership meets members at various shows throughout the country³⁶⁷ and discusses the policy of the organisation:

“[The shows] give members and supporters the chance to come and meet the Trustees, Director and Office Manager face-to-face and discuss Charity policy, direction-of-travel and other issues of mutual interest.”³⁶⁸

³⁶⁶ SBS 26.03.2017; SBS 06.07.2018

³⁶⁷ SBS Newsletter Winter 2010, 1; SBS Newsletter Summer/Autumn 2011, 12; SBS Autumn/Winter 2013, 2; SBS Newsletter Autumn / Winter 2014, 3; Newsletter Autumn / Winter 2015, 5

³⁶⁸ Accounts and report 2015, Companies House, 7

Members had a chance to directly communicate views with both trustees and staff during these shows:

“Your trustees and staff look forward to meeting members on our stands at the shows. It is good to meet faces behind the data-base details and hear your views” (SBS Newsletter Summer 2010, 9).

The views and concerns raised by members at these meetings were taken in consideration by the staff and trustees. The Director of SBS wrote the following in the organisational newsletter:

“Most importantly, I attended several Game and Country fairs in Scotland, Wales and England where I met many of you, our loyal members. It was refreshing to be able to hear your views, thoughts and concerns at first hand. I can’t promise that we will be able to address everything that was raised, but we will attempt to incorporate as many of your suggestions as we can, into forthcoming research projects.” (SBS Autumn/ Winter 2013, 2).

During the face-to face meetings across the country, the staff provides members with a “condensed version of the annual general brief” and the members’ input is then fed into the strategy development process (SBS 06.07.2018). In 2014 the executive director promised that much of the members’ feedback will be incorporated in the business plan (strategy) of SBS.³⁶⁹ When asked about the extent to which members are involved in shaping programmatic priorities and the strategy of the organisation, one of the interviewees said that membership involvement varies depending on members interest, however, members are given opportunities to provide input on the programmatic priorities of the organisation:

“So, members as I mentioned before are encouraged to tell us how we are doing and tell us, give us their ideas and agree or disagree with the state of our priorities and put forward alternatives if they disagree. [...] So those ideas will filter up, and they will be coalesced into policy or other positions, which we wish to take, and they find themselves expressed in the sort of research we commission to other scientific and academic research institutions to carry out for us. But all ideas filtering up will be collected together and the trustees will then look at it and decide in which direction we wish to go. So, for example, two years ago we held a what will become one of a regular series of strategy sessions whereby all the input is taken and kicked around, and we look at progress or lack of progress and set ourselves the next sort of five years’ worth of objectives.” (SBS 06.07.2018)

In 2015 they conducted a questionnaire which was circulated with the AGM notification pack.³⁷⁰ The aim of the survey was to assess the level of members’

³⁶⁹ SBS Newsletter Autumn / Winter 2014, 3

³⁷⁰ SBS Newsletter Spring / Summer 2015, 3

satisfaction with the running of the charity, the ways the charity represented their views and overall lobbying and communication efforts.³⁷¹ The review of the survey answers was presented at the AGM in the presence of members and trustees.³⁷² SBS promised that the raised concerns will be addressed by the trustees:

“Finally, thanks to all of you who took time out to complete our members’ questionnaire last month. The results were very encouraging and gave us a resounding mandate to continue upon the Trustees’ current chosen path and strategy. And for those few who were not content about certain aspects of our business, rest assured that we will be debating how best to address your valid concerns and taking steps where possible to improve our business and other practices.” (SBS Newsletter Spring / Summer 2015, 5).

At last, members are also encouraged to provide input through social media, the website and through the bi-annual magazine.³⁷³ They also invited members to volunteer at the shows.³⁷⁴ The evidence suggests that SBS in addition to rule-based participation provides many opportunities for consultative participation through surveys, face-to-face meeting during events and online.

JMA is the other organisation under study which does not fully fit the membership centred governance model. The members are invited to contribute to a new strategy that is usually enacted every five years and it is a one-year process (JMA 13.11.2017). Members have the possibility to share ideas via email and when JMA was deciding on the merger with Friends of the Earth Netherlands they formed an advisory group composed of members to discuss the consequences of the merger (JMA 23.10.2017). The working groups of the organisation are invited to propose viewpoints and actions (JMA 13.11.2017). Considering that JMA holds two AGMs a year were all the members are invited to participate and have the chance to shape the meeting agenda in advance,³⁷⁵ JMA as expected does not offer many opportunities for consultative participation.

Similarly to JMA, we find that NVL, having a membership-centred governance, offers few opportunities for consultative participation. The main way in which

³⁷¹ SBS Newsletter Spring / Summer 2015, 13

³⁷² SBS Newsletter Spring / Summer 2015, 3

³⁷³ SBS 06.07.2018

³⁷⁴ SBS Newsletter Winter 2012, 16

³⁷⁵ JMA 13.11.2017; JMA 08.11.2017

members can raise their issues and propose ideas is through the online forum or social media.³⁷⁶ For example, one of the interviewees, through the online forum initiated a re-introduction of an organisational newsletter³⁷⁷ for members to share their experiences and small contributions (NVL 06.10.2017). The executive board endorsed the initiative and planned the re-introduction of a digital newsletter.³⁷⁸ The organisation does not provide other opportunities for consultative participation, because they have a high AGM participation, and during the AGM members regularly provide feedback and vote on the planned program for next year (NVL 06.10.2017).

HOS, having a membership centred governing model, as expected provides very few opportunities for consultative participation of members. The main way in which members can raise an issue in between AGMs is through direct contact with the leadership:

“I mean if there’s anybody wishing to raise an issue they have the ear of the committee. All of our contacts: our telephone numbers, our addresses, our emails are available to the membership and if anyone has a problem or an issue they can simply, you know, talk to somebody. So, there’s, the communication with the entire membership is very good. I mean in practice I can’t honestly think if there’s ever been an issue that’s been raised by the membership but if they wished to, they could do.” (HOS 06.10.2017).

Members are also encouraged to participate in discussion at the online forum, even though this is used mainly to exchange information on orchids.³⁷⁹ Similarly to JMA and NVL, members are regularly invited through the newsletter to send proposals for discussion to be included on the AGM’s agenda³⁸⁰ and they are invited to provide feedback on the AGM minutes via the HOS website.³⁸¹ HOS, similar to NVL is a conservation organisation which is not involved in advocacy activities and has high level of rule based participation and executive board led by members. Hence, the organisation does not have the need to invest in opportunities for consultative participation.

³⁷⁶ NVL 06.10.2017; NVL 27.09.2017

³⁷⁷ NVL maintained an organisational newsletter in the period 1997-2011.

³⁷⁸ Written answers from NVL board 26.10.2017

³⁷⁹ AGM Minutes report 2013, April; AGM of the Hardy Orchid Society 19th April at 10.30.2015

³⁸⁰ HOS Newsletter January 1997

³⁸¹ Minutes of the 21st Annual General Meeting of the Hardy Orchid Society 30th March 2014

The NHS Alliance has a membership governance model, and against the expectations provided multiple opportunities for consultative participation by members. In addition to the AGM, members had the opportunity to give feedback on policy matters and direction through the policy networks and at events organised throughout the years.³⁸² Due to the strong advocacy focus of the organisation, members are regularly consulted on policy matters. For example, in August 2005 the chief executive called on members to express views on the Department of Health's reform of commissioning:

"The DH paper which will lead to local reviews on roles, responsibilities and structures has led to much speculation, and some knee-jerk reactions in the media. In the Alliance, we believe this is unhelpful and we would like to take a more considered view, informed by the views of members as to the key issues in implementation. Such views will inform the NHS Alliance's media stance, but more importantly, will be fed into meetings with Ministers, discussions with DH officials, and policy advisors, which have been arranged already. [...] You have told us before that the most valuable service we can provide to members is to give a voice where it matters. We are committed to doing just that and I look forward to receiving your views [...]"³⁸³

Much of the work of NHS Alliance was organised through national networks which focused on a specific primary care area – "each with a national lead, facilitator and steering group with secretarial support."³⁸⁴ There were thirteen professional networks of members that brought specialist expertise in the organisation.³⁸⁵

In addition, members opinion was surveyed regarding their policy stances (NHS Alliance 31.06.2017). One interviewee explains that the process of consultation with members occurred through questionnaires and emails, when more rapid response was required:

"Now, over and above [the formal] governance arrangements, the organisation would quite often send out questionnaires canvassing members' views on some things that we were dealing with. So for instance when the government of the day were intent on changing the commissioning arrangements and abandoning PCT's and moving into something else, we would canvass all of our members both in writing and sometimes, more rapidly, using emails and basically say to them 'Look, we have a meeting with the government next week, what do you think about these issues and are there other items that you would like to raise?'" (NHS Alliance 23.06.2017).

³⁸² NHS Alliance 02.06.2017; NA 31.06.2017

³⁸³ Message from Chief Executive August 2005

³⁸⁴ NHS Alliance Report – Leading Primary Care 2008, 9

³⁸⁵ NHS Alliance Yearbook 2008, 11

This means that the NHS Alliance, being an advocacy group, which represents members' interests, in addition to rule-based participation and members presence in the executive organ, provides many additional opportunities for consultative participation in between AGMs. This is against the theoretical expectation. Similarly, to NAPA and PIF, two health organisations in the UK with leadership centred models, NHS Alliance is representing professional health interests. The NHS Alliance is a particularly active and influential advocacy group, so to be able to understand the positions of the membership and articulate policy stances in accordance with members interests, in addition to other forms of membership involvement, the organisation regularly consults members on strategic and policy matters.

Finally, LVPW is a Dutch health organisation with a membership centred governing model. There is limited evidence that they provide opportunities for consultative participation. One of the correspondents suggested that members can contact the organisation with their input throughout the year.³⁸⁶ Members are recruited as volunteers in several policy committees,³⁸⁷ and there are 17-20 members that participate in these committees (LVPW 10.10.2018). The organisation provides mandatory training for the members few days a year where they can provide feedback on the work of the organisation (LVPW 10.10.2018). However, the main way in which members are consulted about the programmatic priorities of the organisation is at the annual general meetings.³⁸⁸

In summary, the six organisations with membership centred governing models differ in their offer of consultative participation opportunities. Four organisations with membership centred model (JMA, LVPW, HOS and NVL), as theoretically expected, provided limited opportunities for consultative participation. Two organisations, SBS and NHS Alliance, against the expectations provide many opportunities for consultative participation in-between AGMs where members engage in rule-based participation. HOS and NVL are inward looking

³⁸⁶ LVPW a E-mail correspondence 08.05.2018

³⁸⁷ Volunteers take part in several committees including: the validation committee, the schooling committee, the registration and visitation committee, the complaints committee, the PR-committee (LVPW website accessed at <https://www.lvpw.nl/vereniging/commissies> on 09.11.2018).

³⁸⁸ LVPW b E-mail correspondence 08.05.2018

conservation groups that do not react to policy dynamics, therefore for them it is sufficient to consult members on organisational and programmatic matters from one AGM to another. JMA is a Dutch environmental youth group representing broader causes, and in the past years has not been actively engaged in lobbying or policy activities, even though they have implemented raising awareness campaigns. Hence, the organisation does not have a need to consult members regularly on policy or programmatic stances. Also, LVPW, a Dutch health organisation that represents professional interests of members, has very limited lobbying activities because they represent an aspect of health which is not a core responsibility of the Ministry of Health, but a complementary health branch (LVPW 10.10.2017). On the other hand, both NHS Alliance and SBS³⁸⁹ are active in the policy processes. The NHS Alliance particularly – similar to PIF and NAPA has to respond rapidly to policy changes in the health and care sector. The evidence suggests that the ‘politicalness’ of the group (i.e. its core mission), the type of membership and policy field dynamics matter for understanding consultative participation across organisations.

8.4. Comparative Analysis of Consultative Participation across Governing Models

In this chapter, I investigated whether organisations with different governing models differ in terms of the level of consultative participation, defined as the opportunities for members’ input on organisational matters and programmatic priorities. On the one hand, the expectation was that organisations with leadership centred governing model will offer many opportunities for consultative participation to be able to maintain the link with their members. On the other hand, the expectation was that organisations with membership centred governing model will offer only few opportunities for consultative participation because the organisation already invests in maintaining rule-based participation.

The findings from the analysis are summarised in Table 16. They show mixed results across the different governing models, which indicate that there are other factors that account for the variation of consultative participation across

³⁸⁹ SBS in addition has professionalised board, so to keep the link with the members, they introduce many opportunities for consultation in between AGMs.

organisations. We find that four organisations in the UK, two with leadership-centred model (health organisations PIF and NAPA) and the two with membership centred model (health organisation NHS Alliance and environmental organisation SBS) provide many opportunities for consultative participation. The six remaining organisations provide only few opportunities for consultative participation. Two leadership centred organisations (environmental group SAS and health group Vitiligo.nl) against the expectations provide only few opportunities for consultative participation. Also, four organisations with membership centred governing models, environmental groups JMA, HOS and NVL, and health group LVPW, provide few opportunities for consultative participation in line with the theoretical expectations.

Table 17: Results on Consultative Participation across Organisations

Organisation	Country and policy field	Governance model	Expectations for consultative participations	Results
National Activity Providers Association	UK Health	Leadership centred	Organisations will offer many opportunities for consultative participation	Confirmed
Surfers Against Sewage	UK Environment			<i>Not confirmed</i>
Patient Information Forum	UK Health			Confirmed
Vitiligo Netherlands	Netherlands Health			<i>Not confirmed</i>
Young Friends of the Earth Netherlands	Netherlands Environment	Membership centred	Organisations will offer only few opportunities for consultative participation	Confirmed
Songbird Survival	UK Environment			<i>Not confirmed</i>
Hardy Orchid Society	UK Environment			Confirmed
NHS Alliance	UK Health			<i>Not confirmed</i>
National Association of Psychosocial Workers	Netherlands Health			Confirmed
The Dutch Association for Dragonfly Studies	Netherlands Environment			Confirmed

Based on the results, we can discern inductively some patterns that account for consultative participation across the ten organisations. There is a country and policy pattern, namely, I find that only UK organisations provide many opportunities for consultative participation and that all the three health organisations in the UK, despite their difference in governing model have strong consultative participation. NAPA and PIF are service organisations operating in the health sector in the UK, and they represent the professional interests of their members. The NHS Alliance, despite being different in terms of the governing model, is very similar to NAPA and PIF in terms of core mission, type of membership and policy field. To be able to react to the changing policy processes in the health sector in the UK and accurately represent and serve members' interests, these organisations maintain various channels for members' input.

However, there is no policy specific dynamic when it comes to British organisations that operate in the environmental field, where we find mixed results. Only one organisation, SBS, out of the three environmental British organisations under study provides many opportunities for membership involvement. And this is against the expectations in the case of SBS, because the organisation was classified as having membership centred model. On the other hand, SAS, an organisation with leadership centred model against the expectations offered few opportunities of membership involvement and HOS, the last environmental group in the UK with membership centred governing model, in line with expectations, offers few opportunities for membership involvement. This means that SBS and SAS do not conform with the initial theoretical expectations, and additionally differ in the offer of consultative participation opportunities. SBS does not fully fit the membership-centred model because it has professionalised board. This in combination with the dependence on members for funding and its active policy participation accounts for the fact that the organisation has created many opportunities for members' input in-between AGMs. SAS, on the other hand, fully fits the model of leadership centred governance and does not offer additional opportunities for consultative participation. In that sense, it resembles the model of protest business (Jordan and Maloney 2007) and confirms that organisations that are driven by the logic of influence (Schmitter and Streeck 1999) and led by staff will provide only for little opportunities for members' input on policies (Jordan 2012, 97). Instead they will treat members as source of resources, financial and

voluntary support for organisational campaigns). Jordan and Maloney (2007, 169) find that large campaigning groups in the UK provide venues for membership involvement on local level through volunteering. The evidence on SAS being a smaller national environmental campaign group, fits well their description.

In the Netherlands, we find that all four organisations under study provide very few opportunities for consultative participation. This reinforces the country specific divide. Three organisations with diverse core mission, NVL and JMA being environmental groups and LVPW being a health group hold regular AGMs. Their members shape the agenda during AGMs and use their formal voting rights to influence programmatic priorities. Therefore, for these organisations, investing in additional opportunities for feedback is not essential to maintain the link with members and incorporate their needs in the organisational agenda. Vitiligo.nl is the only Dutch organisation with leadership centred model which represents patient interests and provides information of interest to its members, patients of vitiligo and their families. They have not developed many opportunities for involvement in consultative participation because their members do not demand such opportunities and do not use the formal voting rights they are given. As it was said earlier, this corresponds to findings based on survey data by Binderkrantz (2009, 670) that suggest lower levels of membership involvement among patient groups in comparison to other types of groups in the population.

The findings in this chapter furthers our understanding about consultative participation in smaller groups by showing that some level of consultative participation as a distinct way of involving members exists across different types of non-profit membership organisations. Importantly, it suggests that differences in the leadership interest to invest in such opportunities can be better understood in terms of country and policy specific dynamics, membership type and organisational mission. The difference in governing models cannot account for differences in consultative participation across groups. These theoretical expectations should be further assessed with a large-N study design.

9. Conclusion

9.1. Introduction

The main research question guiding this study was ‘whether and how does non-profit law related to legal forms and indirect benefits affect - or fail to affect - the internal governance of non-profit membership organisations in developed democracies?’. To answer this question, the study chose a theoretical perspective building on institutional theory of organisational isomorphism and resource dependence theory (Di Maggio and Powell 1983; Ashworth et al 2007; Pfeffer and Salancik 1978; Hodge and Piccolo 2005). Coercive pressures and provision of privileges were considered key for understanding how law affects organisations. In addition, the organisational leadership was considered central in initiating organisational change based on their understandings of the legal environment, and in line with their interests for increasing social legitimacy or increased organisational efficiency (Hall and Taylor 1996; Scott 1987).

The main argument that the research assessed empirically is that non-profit law affects internal governance by shaping two central aspects of internal governance – members’ formal voting rights and their usage on the one hand, and board professionalisation on the other. Formal voting rights are defined as the rights of ordinary members to attend the annual general meeting and elect their representatives. Rule-based participation is defined as the use of formal voting rights that are enshrined in organisational rules (governing documents such as statutes, constitution, articles of association etc.). And board professionalisation is defined as the external recruitment of skilled volunteers with professional competencies, such as the skills, experience, and knowledge relevant for organisational maintenance, to fill in unpaid positions on the executive organ. These aspects of internal governance are important because they outline the governing model of an organisation and the role that members play within the governing model. Matters of internal governance are key to our understanding of the value of non-profit membership organisations for members and societies (Tschirhart 2006, 534).

I expected these aspects of internal governance to be shaped by legal forms available in the legal regimes and the intensity of regulatory constraints related to maintaining configurations of indirect benefits within these legal regimes respectively. Legal forms were defined as the types of organisational structures an organisation can adopt from a legal perspective. Indirect state benefits encompass legal personality and tax beneficial status, which are the two types of benefits most frequently accessed by non-profit membership organisations. The first analytical distinction was that legal regimes differ in the types of legal forms available for membership organisations, with some specifically regulating formal powers for members and others not. The second main analytical distinction was that regardless of the non-profit tradition (common law or civil law) and the type of regulatory regime (constraining or permissive), within a regulatory regime we can distinguish between up to three configurations which differ in the combinations of indirect benefits they have and consequently they differ in the type and intensity of regulatory constraints (i.e. reporting requirements) they are exposed to.

The main expectation was that, non-profit regulation, depending on the legal forms available in the legal regime and the configuration of indirect benefits the organisations maintain, will encourage the presence or absence of formal voting rights and their use (i.e. rule-based participation), and the presence or absence of board professionalisation. Rule-based participation and board professionalisation are two characterise of governance that combine in two contrasting ideal typical governing models: a *membership centred model* in which members use their formal voting rights in practice and sit on the executive board; and a *leadership centred model* in which members do not use their formal voting rights in practice and do not sit on the executive board. In line with institutional isomorphism (DiMaggio and Powell 1983) the expectation is that organisations operating in the same legal forms and exposed to the same regulatory constraints related to maintaining indirect benefits will tend to develop similar governing models.

To empirically assess the impact of non-profit law on central aspects of internal governance of interest, I have selected two countries, UK and the Netherlands, that represent different traditions of non-profit law and represent constraining

legal regimes in terms of the intensity and complexity of regulatory constraints. I have also selected ten smaller non-profit membership organisations, six in the UK and four in the Netherlands that operate across two policy fields, environment and health, and differ in the configurations of indirect benefits they maintain. The advantage of doing so is that there is a variation in the cause of interest, firstly within each country there are different legal forms available for membership organisations. Moreover, the organisations are diverse cases in terms of configurations of indirect benefits. I have selected two policy fields that differ in the available state funding and organisational density, to be able to assess if there are any policy specific influences on internal governance related with these factors, and if identified patterns hold across policy fields. Finally selecting younger organisations helped accessing information about the earlier days of organisational life.

To answer the research question, I have implemented an exploratory qualitative comparative case study design that synthesizes legal analysis of non-profit law related to legal forms and indirect benefits in the UK and the Netherlands and organisational level analysis of changes in non-profit governance across the ten non-profit membership organisations. I have utilized multiple sources of evidence for both the legal and the organisational analysis including statutory regulation, secondary sources, organisational documentation, semi-structured interviews and email correspondence with legal experts and organisational actors.

In this chapter I will firstly summarise the empirical findings and try to give an answer to the overall research question. Secondly, I will discuss the theoretical, empirical and normative implications of the study. Finally, the last words will be dedicated to avenues for future research.

9.2. Summary of Empirical Findings

In this section I will present a synthesis of empirical findings for each of the theoretical expectations that guided the research: The *Formal rights expectation* and the *Rule-based participation expectation*, the *Board professionalisation expectation* and the *Consultation expectation* as elaborated in the following.

Formal rights expectation and Rule-based participation expectation

The first link that the thesis explored is between the types of legal forms available for membership organisations in the two countries and the adoption of formal voting rights in the governing documents of the ten organisations under study. Drawing on the understanding of law as a constitutive environment (Edelman and Suchman 1997, 479) that shapes the building elements of organisations and relations between internal actors (Van der Ploeg 2009, 3) I devised two expectations: *The Formal rights* and *the Rule-based expectation*. Following Lansley (1996) I expected that non-profit law shapes the internal governing structure, which in turn shapes the extent to which members are involved in authoritative decision-making. Hence, I expected that organisations operating in legal regimes where there are specific legal forms for non-profit membership organisations will guarantee formal voting rights for members in the governing document, whilst organisations operating in legal regimes which do not regulate formal voting rights will either not stipulate them in the governing document or will tend to limit them in practice (*Formal rights expectation*). The *Rule-based participation expectation* was that organisations that stipulated formal voting rights in their governing document will provide opportunities for use of these rights in practice i.e. members will be engaged in rule-based participation. The *Rule-based participation expectation*, hence aims to clarify the link between the legal rights which the organisation provides in the governing documents and the actual use of formal voting rights, since common criticism of the study of formal voting rights is that these are not reflective of actual membership involvement (Cnaan 1991; Leardini et al. 2016).

The *legal analysis* in Chapter four showed that two legal forms available for non-profit membership organisations that are most frequently used in practice – companies limited by guarantee and unincorporated associations in the UK provide freedom for organisations to decide whether the wider membership will have the right to attend the AGM and elect the executive board. In the Netherlands, non-profit membership organisations operating in the legal form of the formal association, by law, have to provide mandatory rules to the meeting of members to control and elect the executive board.

Given these legal differences, I expected that British organisations operating in the form of companies limited by guarantee and unincorporated associations are more likely not to grant formal voting rights in the governing document or limits such rights in practice, whilst Dutch formal associations are more likely to stipulate formal voting rights in the governing documents. Indeed, the *organisational analysis* in Chapter five assessing the *Formal rights expectation* found that all Dutch organisations, irrespective of policy field, stipulate formal voting rights for members in the statutes.

The assessment of the British organisations is not straightforward. Namely, three of the British organisations, two unincorporated associations and one company limited by guarantee stipulated formal voting rights for members in their governing documents. The evidence suggests that organisations that are dependent on their members for funding and have leadership who sees membership participation as an added value, even though operating in a legal environment where the leadership is 'free' from constraints to adopt a centralised decision-making structure, will keep providing formal voting rights to members. The remaining three British organisations operate in the legal form of companies limited by guarantee, and when accessing legal personality, they have stipulated formal voting rights for members. However, the analysis showed that later during their lifetime these three organisations limited formal voting rights to the executive board, which is more in line with the *Formal rights expectation*. The change has happened under the initiative of professional management, highlighting the crucial role that organisational leaders have in shaping internal governance. The law in the UK, by not stipulating constraints related to granting formal voting rights of members, opens the door for leadership initiatives to centralise decision making rights to the executive board. Interestingly, the two of these three organisations have tax beneficial status in addition to being companies limited by guarantee, and exactly these organisations changed their formal documents to reflect their centralised governing structure. The remaining organisation of the three, kept the old formal rules, whilst the leadership interpreted and applied these rules to match a centralised decision-making structure in which wider members do not attend the AGM and do not elect the executive board.

The finding that charitable companies in the UK adjust their formal rules to match the intended governing structure is indicative of the intervening role that tax beneficial status and the legal and supervisory structures attached to its maintenance have on organisational governance. Organisational members can formally complain to the Charity Commission of England and Wales if organisations do not act in accordance with the governing rules, which in turn might lead to formal inquiry and reputational costs for charitable companies. In summary, in the UK, where non-profit law does not regulate the powers of organisational members, non-profit membership organisations vary in terms of who is granted with formal voting rights – the wider members or the executive board. The variation of formal voting rights across the six British organisations can be accounted by factors such as dominant source of funding (Cordery and Sim 2017) and leadership choices (Moe 1980).

The *organisational analysis* assessing the *Rule-based participation expectation* in Chapter six found that, except in the case of one Dutch organisation, all the organisations that guarantee formal voting rights also provide opportunities for its usage and experience rule-based participation by members. The presence of formal voting rights is a precondition for the presence of rule-based participation stressing the importance of formal rules for the actual operation of membership organisations. British membership organisations have discretion to have or not to have formal voting rights for members to start with, which in turn accounts for the presence or absence of rule-based participation. In the Netherlands, membership organisations are required by law to give members formal voting rights, and organisations do so not only formally but also in practice. This means that the presence of formal voting rights is the foundation for rule-based forms of membership involvement that entail AGM attendance, election of board members, and voting on programmatic priorities. The one Dutch organisation that did not experience rule-based participation in practice, however, did not alter the formal voting rights, which means that members are able to activate such rights in the future. The three British organisations that limited formal voting rights during their lifetime experienced low level or absence of rule-based participation before the change. This together with the legal form in which they operated allowed the leadership to initiate formal rule change, something that in the

Netherlands would not be possible for organisations operating as formal associations. The findings suggest that non-profit membership organisations operating in legal regimes similar to the Netherlands will provide central role to organisational members and, in turn have a strong predisposition for rule-based participation.

Board professionalisation expectation

The second link that the thesis explored was between the configurations of regulatory constraints related to maintaining indirect benefits and executive board professionalisation in the ten organisations under study. Drawing on the understanding of law as a regulatory environment (Peters and Nispen 1998; Edelman and Suchman 1997) that shapes organisational behaviour through the allocation of regulatory constraints and privileges (James 2000; Bolleyer 2018) I devised the *Board professionalisation expectation*. Following suggestions in the third sector literature I expected that maintaining indirect benefits and the reporting and accountability requirements attached to them (Salamon and Flaherty 1996; Cordery et al. 2016) will incentivise organisational adaptation through recruitment of professional competencies in the executive board (Breen 2013; Edwards and Cornforth 2003). The organisations adapt by exposure to coercive pressures (Di Maggio and Powell 1983; Edwards and Cornforth 2003; Cornforth 2003). According to the *Board professionalisation expectation* I expected to find that non-profit membership organisations which are exposed to high reporting requirements and external supervision will undergo board professionalisation, whilst organisations which are exposed to lenient reporting requirements and little or no external supervision will not. Organisation that changed from 'no indirect benefits' towards 'more indirect benefits' and consequently are exposed to higher constraints are more likely to undergo board professionalisation.

The *legal analysis* in Chapter four showed that non-profit membership organisations maintaining legal personality and tax beneficial status in the UK since the 1980s have been exposed to higher reporting requirements and external supervision than organisations receiving the same configuration of benefits in the Netherlands. Overall, charitable companies in the UK are the most constrained configuration, followed by organisations with tax beneficial status in

the Netherlands, both being exposed to high regulatory constraints. Organisations operating as companies limited by guarantee and unincorporated associations in the UK, and formal associations in the Netherlands are exposed to low regulatory constraints. Based on the legal analysis the specific expectations where that organisations with 'all indirect benefits' (charitable companies and ANBIs) are more likely to undergo board professionalisation in the two countries than organisations operating with legal personality (companies limited by guarantee and formal associations) or 'no indirect benefits' (unincorporated associations).

The *organisational analysis* in Chapter seven assessing the *Board professionalisation expectation* found that British organisations operating as charitable companies with 'all indirect benefits', being the most constrained configuration under study, after being exposed to higher regulatory constraints, show signs of board professionalisation. Moreover, unincorporated associations in the UK and formal associations in the Netherlands, being the least constrained configurations, as expected, do not undergo board professionalisation during their lifetime. Three out of ten organisations do not conform with the expectations: a British company limited by guarantee being exposed to lower regulatory constraints underwent board professionalisation against expectations; and two Dutch formal associations with ANBI status underwent board professionalisation in the period before they accessed tax beneficial status i.e. when operating under lower regulatory constraints. These three organisations underwent board professionalisation under the initiative of their organisational leadership. In the language of institutional isomorphism, these organisations adapted the composition of their executive organ under normative pressures carried by professional management (Zucker 1987; Mosley 2012) and not under coercive pressures from legal regulation (Di Maggio and Powell 1983). In summary, the findings suggest that organisation operating under lower regulatory constraints across different legal regimes are more likely to have executive boards filled in with members. Organisations that operate in the configuration of 'all indirect benefits' i.e. in legal regimes similar to the UK are more likely to have executive boards filled in with professionals recruited outside of the organisation.

Consultation expectation

The final link that the thesis explored is that between consultative participation as a distinct form of membership involvement across the ten organisations characterised by different governing models. Drawing on the third sector and interest group literature I focus on membership involvement through consultative means (Warleigh 2001; Maloney 2015; Saidel 1998; Guo and Musso 2007), being an important cost-effective form of membership involvement used by organisational entrepreneurs for membership retention (Moe 1980; Puyvelde et al. 2016). Here I build on the idea that professional management will maintain channels for communication and non-binding input by members in absence of other avenues for participation (Guo and Musso 2007). The *Consultation expectation* expected to find that organisations that have leadership centred governing model characterised by absence of rule-based participation and presence of board professionalisation provide more opportunities for consultative participation. And organisations with membership centred governing models characterised by presence of rule-based participation and absence of board professionalisation are expected to provide fewer opportunities for consultative participation.

The *organisational analysis* in Chapter eight assessing the *Consultation expectation* found mixed results of consultative participation across the two governing models. I found that only British organisations, irrespective of the governing model, provide many opportunities for consultative participation (four out of six British organisations), whilst all four organisations in the Netherlands provide few opportunities for consultative participation. Furthermore, three of the Dutch organisations have membership governing models, meaning the findings fit the theoretical expectations. The finding on the Dutch organisation with leadership-centred governing model characterised by minimal consultative participation suggests that this might be something specific to patient organisations. I found that all three British organisations operating in health policy, despite their difference in governing models have strong consultative participation. The changes in health policy demand non-profit membership organisations to adapt and respond to dynamics in the sector. Hence, organisations operating in the same policy field invest resources in developing

venues for members input on programmatic and policy priorities. The two British organisations that do not conform with the findings are environmental groups that fundamentally differ in their level of 'politicalness' and professionalisation. The one with leadership centred model is approaching members as a resource in the style of the 'protest business' model of campaign groups (Jordan and Maloney 1997, 2007; Grant 2003), whilst the other is an inward-looking organisation, which in line with the expectations for organisations with membership centred governing model, does not offer additional opportunities for consultative participation. In summary the findings suggest that – unlike the other dimensions of governance explored in this thesis being shaped by legal differences - differences in consultative participation can be better explained by country and policy specific dynamics and organisational mission.

In the following section of the concluding chapter I will discuss the implications of the empirical findings, after which I will discuss avenues for future research.

9.3. Discussion of Implications of the Study

Only few studies in the literature have paid attention to the link between legal forms and indirect benefits on the one hand and intra-organisational consequences on the other (Smith and Teasdale 2012; Morgan 1999; Toepler 2010; Locke et al. 2003; Cornforth 2011; Bolleyer 2018). However, no study has investigated the impact of non-profit law on internal governance from a comparative perspective focusing on diverse non-profit membership organisations operating in different policy fields and contrasting legal regimes. By combining legal analysis with organisational-level analysis the study has innovatively responded to the call in the literature for comparative studies focusing on the relation between regulatory constraints and internal governance of non-profit organisations (Cornforth 2011, 1123).

What are the conceptual and theoretical implications from this study? The research shed a light on the impact of the constitutive and regulatory function of non-profit law on internal governance of non-profit membership organisations (Edelman and Suchman 1997). Building on theoretical and conceptual insights from the literature on non-profit regulation, third sector studies and the interest group literature the study has developed an analytical framework for analysing

organisational responses to non-profit law, which is an important advancement in terms of theorising the link between non-profit law and internal governance. More specifically, the study 'introduced' law as an independent variable that, among other variables, affects internal governance of membership organisations (Lansley 1996). An important conceptual contribution to the literature is the development of the concept of board professionalisation, as a distinct form of organisational professionalisation through recruitment of professionals to fill-in unpaid executive positions. The concept can be further used to develop understanding about the external factors that affect board composition. Another useful conceptual distinction was the one between rule-based participation defined as the use of formal voting rights enshrined in governing documents and consultative participation that entails opportunities for members input which are not based in formal voting rights. This distinction can be further used to understand what factors enhance one type of membership involvement over the other and the links between them.

What are the broader implications of this study? The empirical findings imply that non-profit membership organisations that operate in regulatory regimes like the UK (as shaped by the legal forms available and the indirect benefits they access) will have more diverse formal governing structures, while non-profit membership organisations operating in regulatory regimes like the Netherlands (as shaped by the legal forms available and the indirect state benefits they access) will have more uniform formal governing structures with central organisational role for members. The concept of the charity in Anglo-Saxon countries brings significant benefits to organisations, therefore, a diverse set of membership non-profit organisations are motivated to obtain tax beneficial status and comply with regulatory constraints related to its maintenance (Phillips and Smith 2014; Salamon and Flaherty 1997). The findings on charitable companies in this study, imply that membership organisations in the UK that access and maintain both legal and charitable status are more likely to develop characteristics of a leadership centred governing model. This is confirming indications in previous studies (Morgan 1999; Breen 2013) which suggested that increasingly complex accountability pressures on charities led to professionalisation of trustees' role. Also, it adds to studies that have suggested that charitable status is incompatible

with democratic representation of members (Locke et al. 2003; Lansley 1996). The findings from the Dutch organisations imply that membership organisations that operate in the Netherlands are more likely to develop characteristics of the membership centred model of governance. This implies that non-profit membership organisations in similar legal context to the Dutch might also be 'pushed' towards such model of governance. The findings on consultative participation in smaller groups show that some level of consultative participation as a distinct way of involving members exists across different types of non-profit membership organisation. Importantly, it suggests that differences in the leadership interest to invest in such opportunities can be better understood in terms of country and policy specific dynamics and organisational mission, than in reference to organisations' governing models. Deviations from the membership centred model of governance, specifically board professionalisation in the Netherlands can be linked with normative pressures (Mosley 2012; Zucker 1987) coming from professional managers occupying paid or unpaid positions. Similar, the deviations from leadership centred model of governance among charitable companies in the UK can be linked to leadership judgements about the necessity of staying connected to membership due to legitimacy and financial reasons (Hall and Taylor 1996; Scott 1987). In that sense, the leadership is central for understanding organisational diversity among organisations operating under similar regulatory constraints. In reality we find that organisations, due to leadership choices, comply and often overfulfill perceived environmental constraints to assure access to valued benefits and assure survival.

The empirical findings suggest a stronger implication from the constitutive function of law for the internal governance of non-profit membership organisations in democratic countries with civil law non-profit tradition than the regulatory function of law related to maintaining indirect benefits. In contrast, in democratic countries with common law non-profit tradition there is a stronger implication from the regulatory function of law for the internal governance of non-profit membership organisations than from the constitutive function of law. Moreover, the findings suggest that it is important to account for formal voting rights, because when given in the governing document, the leadership (board and/ or staff) offers actual opportunities for participation and members use these

rights in practice. This means that formal voting rights can be used as a proxy for rule-based participation, considering that accessing organisational data on rule-based participation is often more difficult than accessing data on formal rights in governing documents.

Finally, organisations operating as charitable companies and companies limited by guarantee in the UK unlike unincorporated associations, commonly own assets, have outward looking mission and are publicly visible. This means that the former two are engaged in more fundraising and particularly rely on external sources of funding and solicit private donations. Therefore, from a leadership perspective may be more viable to maintain a supporter base than a membership base. In the Netherlands, where funding from private donations is a small part of membership budgets, as opposed to funding from membership fees and the public sources (Burger et al. 2001), leaders are additionally incentivised to maintain membership centred governing model. In this sense, the regulatory environment is synchronised with the funding environment in both contexts and demands more accountability by groups that are financially linked to the public and less from those that have minimal links (financial or otherwise) with the public.

What are the normative implications from the study? The study of internal governance of organisations is important because non-profit membership organisations provide venues for development of civic and political skills of members and because of the linkage function that organisations have between constituencies and the state (Warren 2001; Skocpol 2003; Salamon and Flaherty 1997; Dekker 2014). The empirical findings hence have normative implications. Members of organisations operating in civil law regimes that have the legal form of the 'association' and are lenient in terms of regulatory constraints and external supervision, will be provided with opportunities to develop such skills. Members will have a chance to attend AGMs, propose issues for discussion and voting, elect representatives, and participate in deliberation and authoritative decision-making over organisational policy. In addition, these members will assume executive board positions and take responsibility for organisational strategy and development. However, these forms of participation are time-consuming and often require considerable personal and voluntary investment, which in times of

increased individualisation and social alienation members of groups might not be ready to give. Members in a legal environment like the UK seem to have more choice of opportunities to participate beyond rule-based participation which are less time consuming and more cost-effective. British organisations develop a plethora of online and offline venues for members input, however, the question remains open about the extent to which members input through consultative forms of participation is taken on board by organisational leadership.

In terms of representational capacities of organisations (Guo 2007; Guo and Musso 2007), the implications differ for organisations with different core mission and type of membership (Halpin 2006; 2010). Service and advocacy groups in the UK that operate as charitable companies operate in a legal environment that incentivizes centralisation and professionalisation of decision making in the executive board and consultative forms of participation. Whilst organisation that represent broader causes may benefit from such governing model, organisations that represent direct interests of members will have decreased representational capacities to 'stand for' and 'act for' members (Guo and Musso 2007; Leardini et al. 2016). If members of the executive are not recruited organically from within the organisation and if the executive is not elected and controlled by the members meeting, then there is a risk that the board will not reflect the characteristics of the membership they represent (Bramble 2000; Guo 2018). In turn, such governance set-up will shift the logic of operation from expressive value-oriented mission to an instrumental logic of operation focused largely on organisational performance and survival (Frumkin 2002; Stewart 2014, 9-10).

The main dilemma is then whether the state should play a crucial role in assuring accountability of organisations towards society, and if it does, how to craft regulation that in content and intensity strikes the right balance between the interests of the members and the interests of the public (Irvin 2005; Bolleyer 2018). Can we reconcile the tension between demands for more accountability (Phillips 2013; Phillips and Smith 2014; McDonnell and Rutherford 2018) and demands for enhanced representational capacities of membership organisations (Cnaan 1991; Guo 2007; Guo and Musso 2007; Holmes and Slater 2011)? And should statutory law at all be used as a constitutive and regulatory tool to shape internal governance of non-profit organisations in developed democracies? To be

able to answer these questions, more research should be conducted on the intra-organisational consequences of non-profit law and its implications for mission attainment of organisations. This brings me to the final section on avenues for future research.

9.4. Avenues for Future Research

The empirical analysis encompassed smaller national membership organisations, which are the most common type of organisations in the population. The main limitation of the study is related to the small sample of organisations. The organisations were selected to encompass service providing and advocacy groups, as well as organisations that represent direct interests of members and broader constituencies. This means that the empirical findings can be transferred to similar legal contexts and are valid for smaller national organisations in developed democracies. However, it would be beneficial to investigate whether some of the identified patterns apply to larger and more influential national organisations in terms of membership size and budget. Also, future research should include larger samples of organisations that operate across more policy fields. The empirical findings in this research can be further investigated with quantitative data. New measures should be devised to capture board professionalisation, as well as rule-based and consultative forms of participation. In the UK particularly, one can investigate further the differences between membership organisations with and without charity status, and whether identified differences in governing models hold for organisations with different budget sizes, age and policy fields. Future research should aim to account for the impact of law related to the receipt of indirect benefits as different from the impact of monetary support and rules attached to it. The causes of board professionalisation as distinct type of professionalisation should be further investigated together with the consequences this phenomenon has for mission attainment. Also, future research can explore the drivers behind rule-based participation and consultative participation of members, when and why the leadership decides to allocate resources for one over the other type of membership involvement, use them both or none?

The focus here was on developed democracies representative of the civil law and common law non-profit tradition. The dynamic relationship between the law, organisational type and membership involvement should be further assessed across different legal regimes. The findings on the UK are indicative to some extent for other Anglo-Saxon countries with the concept of the charity, however differences related to availability of other legal forms and indirect benefits within countries with common law non-profit tradition should be explored. Beyond the civil law and common law contexts, the link between law and internal governance should also be explored in countries representative of the Scandinavian and post-socialist legal tradition in Europe. An interesting question to explore is the extent to which organisations operating in Scandinavian and post-socialist non-profit regimes differ in terms of intra-organisational development from organisations in civil law and common law non-profit regimes?

The mechanisms through which law affects governance that I discovered inductively merit further investigation. The leadership limited formal voting rights in organisations in which members did not use such rights and that operated in legal contexts that enable such limitation. Also, professional management is crucial in the development of professionalised boards. Future research can further explore these mechanisms and shed a light on the ways in which leadership mediates the impact of law on non-profit governance. Greater attention should be also paid to potential cultural differences in the application of legal rules by organisational leadership across legal contexts.

In the past few years the focus of civil society leaders has been on the shrinking civic space and implementation of restrictive laws in countries around the world, including examples from within the European Union. However, organisational responses to restrictive environments are not investigated in a systematic and comparative way. Future research should tap into the organisational responses to non-profit law which is perceived as restrictive as opposed to non-profit law which is perceived as enabling i.e. strikes the right balance between benefits and regulatory constraints. By synthesizing legal and organisational research this thesis highlighted the need for further investigation of intra-organisational consequences of different types of legal regulation. I conclude this thesis with the hope that future research will pay increased attention to non-profit law as an

external factor shaping internal governance of non-profit membership organisations.

APPENDIX A

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Hemels 11.09.2015

van der Ploeg 09.10.2017

Steward QC 14.09.2018

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“ANBI must publish the following particulars on an internet site:

- The institution's name
- The RSIN (Legal Entities & Partnerships Identification Number)/Tax number
- The contact details
- The ANBI's object
- The policy plan
- The position of the directors
- The names of the directors
- The payment policy - refer to the GBA or salary scheme for personnel where applicable
- A report of the activities that have already been carried out
- A financial statement”

Overview of guidelines/publications (on the left) which concern political activity of charities and key legal acts which preceded them (right)

1995, 1997, 1999 versions of guidelines on political activity of charities CC9	1992 Charities Act 1993 Charities Act (Context: Tony Blair became leader of opposition in 1994, and prime minister since 1997, and the idea of the third sector became more prominent (Kendall 2000, 15; Deakin Commission Report which suggested compact between the government and voluntary sector (1996))
2001 –Independence from the state 2004 guidelines CC9 Charities and Elections 2005, (Charity Commission) 2003- RR12 - The Promotion of Human Rights 2005- RR12 - The Promotion of Human Rights	PPERA 2000 Human Rights Act 1998 (Context: “Compact between the government and the third sector in November 1998, and the Prime Minister’s announcement of a major upgrading of the unit within the central government responsible for the third sector in January 1999, represent a step change in the relationship between the third sector and UK central government” (Kendall 2000, 22); The Private Action, Public Benefit, A Review of Charities and the Wider Not-For-Profit Sector, Strategy unit Report (2002, 45) suggested changes in the guidelines on political activities of charities and distinction between legal requirement and good practice to be made in order to encourage charities and their trustees to advocate more effectively)
2008 Guidelines CC9 2009, 2010, 2011 - Charities and Elections Guidance updates –version (Charity Commission) 2009 April - Charities and Political Donations Guidance Update from the Charity Commission	2006 Charities Act
Guidance Charities, Elections and Referendums July 2014 (Charity Commission) Charities and Campaigning, 2014, Electoral Commission Campaigner updates 2015 by Electoral Commission	2011 Charities Act Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

APPENDIX B

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NAPA Summer/Autumn 2003 Volume 7 Issue 1

NAPA Summer 2005 Volume 9 Issue 2

NAPA Summer/Autumn 2003 Volume 7 Issue 1

NAPA Summer/Autumn 2002 Volume 6 Issue 2

NAPA Winter 2003 Volume 7 Issue 2

NAPA Spring 2003 Volume 6

NAPA Autumn 2010

NAPA Spring 2005 Volume 9 Issue 1

NAPA Spring 2002 Volume 5 Issue 3

NAPA 2004, Volume 7 Issue 3

NAPA Spring 2005 Volume 9 Issue 1

NAPA Newsletter Autumn 2007 Issue 2

NAPA Summer 2006 Volume 10 Issue 2

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APPENDIX C



COLLEGE OF SOCIAL SCIENCES AND INTERNATIONAL STUDIES

Amory Building
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www.exeter.ac.uk/socialsciences

CERTIFICATE OF ETHICAL APPROVAL

Academic Unit: Politics

Title of Project: The Influence of Non-Profit Regulation and State Support on
Voluntary Membership Organizations in the UK and
Netherlands

Research Team Member(s): Milka Ivanovska Hadjievska

Project Contact Point: mi269@exeter.ac.uk

Supervisor: Nicole Bolleyer

This project has been approved for the period

From: 30th June 2016
To: 20th September 2018

Ethics Committee approval reference: 201516-112

Signature:

Date: 29th June 2016

A handwritten signature in black ink, appearing to read 'Lise Storm'.

(Lise Storm, Chair, SSIS College Ethics Committee)

APPENDIX D

Interview invitation

Dear Mr./Ms. [surname],

My name is Milka Ivanovska Hadjievska and I am a doctoral candidate in Politics at the University of Exeter, UK. I am currently a visiting researcher at the University of Amsterdam. I am writing to you because the [organisation's name] would be an ideal case study to explore how voluntary membership organisations have evolved in changing regulatory environments.

My doctoral research is conducted within the framework of the major 5-year project 'Regulating Civil Society' led by prof. Nicole Bolleyer and funded by the European Research Council. For more information please visit the project website: <http://socialsciences.exeter.ac.uk/regulatingcivilsociety/>

As a [role in organisation] of [organisation's name] you are ideally suited to answer questions about the different reporting requirements related to maintaining legal status and tax benefits, as well as the ways in which members are involved in the organisation. If you accept my invitation for participation, I would be happy to talk to you in person or via phone/ Skype.

I would like to underline that this research is conducted for academic purposes only and your participation is entirely voluntary. The results of the research will be published in my doctoral thesis and academic outputs (papers and presentations) of the 'Regulating Civil Society' project. Anonymity and confidentiality of the interview data are guaranteed.

Your participation in the interview will be of immense importance for my doctoral research and I would be very grateful if you could help me. Thank you in advance!

Please let me know should you have any questions or need additional information.

Kind regards,

Milka Ivanovska Hadjievska
PhD Candidate and Research Associate
Department of Politics | ERC-funded project STATORG | University of Exeter
Address: Amory Building, Rennes Drive, Exeter, EX4 4RJ, United Kingdom
E-mail: mi269@exeter.ac.uk

Consent form

Details of Project

The research is conducted by Milka Ivanovska Hadjievska, a PhD candidate in Politics at the University of Exeter, UK. The research is conducted within the framework of the 5-year project 'Regulating Civil Society', n° 335890, directed by prof. Nicole Bolleyer and funded by the European Research Council. The aim of the project is to investigate the influence of state regulation on voluntary membership organisations (for more information on the project please visit the project website: <http://socialsciences.exeter.ac.uk/regulatingcivilsociety/>). As part of my doctoral research I am conducting interviews with people who have

been/are employed or actively involved in the work of voluntary membership organisations in the UK and the Netherlands. My research taps into questions of organisational development, how the receipt of different state benefits affects the organisation, how membership involvement, professionalisation and political activities evolve since foundation until 2016.

If you have concerns/questions about the research you would like to discuss with someone else at the University, please contact my first supervisor: Professor Nicole Bolleyer, Department of Politics, Exeter University, Devon UK, e-mail: N.Bolleyer@exeter.ac.uk

Confidentiality and Data Protection Notice

Personal data disclosed in interview tapes, transcripts and notes will be held and treated in strictest confidence. The interview data will be used only for academic purposes (PhD thesis, papers and presentations related to the ‘Regulating Civil Society’ project) and third parties will not be allowed access to them (except as may be required by the law). The interview data will be stored on my encrypted and password safe MEGA storage cloud and on the University of Exeter’s server (U drive). The data from the research will be held for an indefinite period of time after the submission of the doctoral thesis in an anonymised form.

Anonymity

If not agreed otherwise, interview data will be held and used strictly on an anonymous basis, with no mention of your name.

Consent

I have been fully informed about the aims and purposes of the project. I have voluntarily agreed to participate in the research and to the use of the interview data in the form and for the purpose specified above. I understand that I can withdraw my consent at any time by contacting the researcher.

.....
(Signature of participant)	(Date)
.....	
(Printed name of participant)	
.....
(Signature of researcher)	(Printed name of researcher)

APPENDIX E

General topic guide (revised)

1. Early years

- When was the first governing document adopted?
- Who effectively run the organisation back then? (budget allocation and setting programmatic priorities)
 - How members participated in decision making processes (AGM attendance, election of board, setting programmatic priorities)?
 - How were members included in the activities of the organisation (fundraising, volunteering)?

2. Legal personality

Why did your organisation decide to incorporate?

- How incorporation affected the governance of the organisation? Did you change the formal governing structure due to registration requirements? If yes, what kind of changes were introduced?
- Were there any changes in the decision-making rights of members?
- Who effectively governed the organisation in the period after registration?
- Did you seek help from members or volunteers with legal competences to be able to maintain legal personality?
- Who was responsible for maintaining reporting requirements after registration?

3. Charitable status

Why did your organisation decide to seek ANBI status?

- Did you change the governing document due to registration requirements? If yes, what kind of changes were introduced?
- Were there any changes in the decision-making rights of members?
- Who effectively governed the organisation in the period after registration?
- Did you seek help from members or volunteers with legal competences to be able to maintain ANBI status?
- Who was responsible for maintaining reporting requirements after registration?

4. Board and staff

- How are members of the board recruited (externally or internally)?
- What kind of professional skills members of the board usually have? Has the board characteristics changed over time?

- When did the organisation hire its first member of staff? What made that possible?
- How the number of employees changed over time?
- Change in type of employees?
- To what extent employees participate in decision making processes related to budget allocation and programmatic priorities? Has this changed over time?

5. Membership involvement

- Are there any changes in the membership structure of the organisation since its foundation?
- What are the ways in which members are involved in the decision-making processes of the organisation?
- Do they elect the members of the board?
- Do they participate in decision making over programmatic priorities/ strategy?
- How many members on average attend the annual general meetings? Has this changed significantly since the organisation's foundation?
- What are the other ways in which members are involved in the organisation?
- How do you inform members about organisational activities?

6. Milestones of organisational development

- In sum, what were the major reforms that your organisation underwent from its foundation until today?
- Is there anything that you would like to add in terms of membership involvement and internal governance that we did not have a chance to cover?

Questions for follow-up interviews and e-mail correspondence

Membership involvement

1. What is the role of members in an organisation like yours?
2. What are the main ways in which members are involved in the organisation?
3. What are the ways in which members participate in decision making over programmatic priorities/ strategy?
4. How many members on average participate at the annual general meeting?
5. Are members involved in the appointment of members of the executive board? If yes, how?
6. Were there any changes in the way members are involved in the organisation over time?

Internal governance

1. What is the role of members of the board in organisation like yours?
2. What kind of skills are represented in the executive board?
3. How are members of the board recruited?
4. To what extent employed staff is engaged in decision making?
5. Who effectively governs the organisation?
6. Were there any significant changes in the way the organisation is governed over time?

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